THE

MUNICIPAL CODE

OF

OHIO;

CONTAINING THE STATUTES RELATING TO

CITIES AND INCORPORATED VILLAGES.

WITH NOTES OF

LEGISLATION AND JUDICIAL DECISIONS.

By J. W. OKEY and S. A. MILLER.

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PREFACE.

THIS work is a re-publication of the Act passed May 7, 1869, by the General Assembly of Ohio, "to provide for the organization and government of Municipal Corporations," and other statutes relating to the same matter. . Notes of legislation have been added, to facilitate comparison with the former statutes; and in the notes of decisions, appended to various provisions, we have endeavored to show the construction which has been placed by the courts on the same or similar language in other statutes.

We have not undertaken to re-publish all the statutes and parts of statutes, whether local in character or otherwise, that in any way relate to the subject; but we have included everything of a general character that can be useful in a work like this. Nor have we attempted to illustrate the text by any general collection of the numerous cases in this country and England that might be found to bear upon it; but we have relied mainly on the cases in our own courts, and, we think, with good reason. If we had included in the work all the statute law of the state in any way relating to the subject, and all the decisions that could in any way illustrate it, we would have prolonged our labors a year or more, and swelled our work to a large and expensive volume.

We have labored with diligence to prepare a work which will be of practical importance to municipal officers, judges, lawyers, and others who may have occasion to examine the law relating to cities and villages; and if we have succeeded in the undertaking, we have accomplished all that was attempted. In the investigation of important questions before the courts, it will be desirable to look to other sources of information; but the gentlemen who are called to make such investigations, are so well informed

on the subject, that it is needless to even indicate those sources. The digests and treatises, as well as the cases, containing the information, are numerous; but a work devoted to municipal corporations, so thoroughly done as to be generally useful throughout the country, though greatly needed, remains to be written. Even if we had such a treatise, the practical value of this work for city and village officers, and all who desire to know the peculiar provisions of our municipal code, would not be in any way impaired.

By the Constitution of 1802, the legislative authority of this state was vested in the General Assembly; and that included power to pass all laws that belonged to and were in the nature of the legislative power, that the object and purposes of the state government required, except as that power was restrained or qualified by other parts of the instrument. There was no special provision as to laws for the government of municipal corporations. The authority to legislate with respect to them rested on the same general provision. But in the Constitution of 1851, while the same general provision is retained, it is required that the General Assembly shall provide for the organization of cities and incorporated villages by *general laws;* and it is enjoined upon that body to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent its abuse.

In 1852 an act on this subject, containing one hundred and eleven sections, was passed by the General Assembly. That was the work of an able lawyer, who devoted much time to its preparation, and an effort was made to comply with the constitutional provision that the law must be "general." But the statute was an experiment, and the wants of the public, real or supposed, secured so many amendments and additions during sixteen sessions of the General Assembly, that the new matter greatly exceeded the old, although the larger part of the old law was really unchanged. And the result was, that the symmetry which characterized the act of 1852, was to a considerable extent destroyed. Among the cases illustrating this fact is *Thomas* v. *Ashland*, 12 O. S. 124, in which Gholson, J., took occasion to make some

remarks in that connection. "The governing all cities and villages," said he, "under one general law, was a new experiment, supposed to be required by the present constitution. It was to be expected that in the working of the experiment, omissions, if not mistakes, would be discovered, to be corrected from time to time by additional legislation, and the addition of a new feature in one part of the system would quite probably leave some other part defective. It will be a work of care and time to perfect an orderly and harmonious system."

The laws being in this great confusion, so that it was always difficult, and sometimes nearly impossible, to ascertain their meaning, the Senate, in the last General Assembly, appointed a committee on the subject, consisting of Senators Scribner, Everett and Linn, who with great labor simplified and arranged the various statutes, and reduced them to one bill, which, after slight amendment, was passed into a law, and now forms the principal part of this work — the longest, and in many respects the most important, statute ever passed in this state. Changes will be necessary, perhaps, to perfect it, and render it entirely satisfactory as a code for the government of the cities and villages of Ohio; but we see no reason to doubt that the act will be as permanent in its character, and as little subject to change, as the Code of Civil Procedure, or any of our more important statutes.

We have felt it to be our duty to include in the notes all the Ohio cases that may in any degree aid in the construction of the present statutes; but in many instances the provision of the statute to which a construction was given, differs in some important particulars from the provision to which the note is appended, and hence care will be required to avoid being misled as to the extent of the application such cases really have to the text.

With some hesitation, we have included notes of a number of manuscript cases, not readily accessible to persons elsewhere who may have occasion to consult this work; but some of these cases are important, and all of them can be readily seen in this city, where, we may remark, a large number of copies of this work will be distributed; and, moreover, while such cases, thus briefly digested, will not be considered as authority, they will doubtless

be very generally regarded as aids of some importance in the construction of the Municipal Code.

The collection of cases as to the powers, duties and liabilities of cities and villages with respect to the streets, will be found full, and we trust satisfactory. And the same is true of the power of making assessments on the owners of property for improvements beneficial to such owner — which power is shown to be firmly established; and, doubtless, it is frequently just in its application, but often much abused. We regret that we have not been able to present a fuller collection of cases in which the power of taxation, now attracting much public attention, has been in any way restricted or qualified.

We must confess that we have done the best we could, in the limited time we were enabled to devote to our humble work, to make it all that we promised — a practical work for all who may have occasion to examine the laws of this state, relating to cities and incorporated villages. But we can not conclude without invoking an indulgent consideration of whatever errors and mistakes others may discover in this edition of the MUNICIPAL CODE OF OHIO.

J. W. OKEY,
S. A. MILLER.

CINCINNATI, Sept., 1869.

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NOTE.—A number of the unreported decisions of the judges in Hamilton county are digested in this volume. In some cases the language, or what purports to be the language of the judge delivering the opinion, is given. It is due to those judges to say, that the work was prepared amid professional and other cares, and that it was not always practicable to submit the manuscript, selected or abstracted from newspaper and other reports, to them for revision. It is hoped that no injustice has been done in substance, however it may be as to form.

MUNICIPAL CODE.

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AN ACT

To provide for the Organization and Government of Municipal Corporations.[1]

Be it enacted by the General Assembly of the State of Ohio, as follows:

PRELIMINARY PROVISION.

SECTION 1. *Application to all municipal corporations.* All municipal corporations in this state now existing, or which may hereafter be created, shall be governed by the provisions of this act, and the territorial limits and wards of existing municipal corporations shall remain as they now are until changed in the manner herein provided.[2]

CHAPTER I.

CLASSIFICATION OF MUNICIPAL CORPORATIONS.

SECTION.
2. Classification.
3. Cities of first class.
4. Cities of second class.
5. Villages.
6. Villages for special purposes.
7. Population requisite for cities and villages.
8. Bodies politic and corporate.

SEC. 2. *Classification.* Municipal corporations shall be divided into cities of the first class, cities of the second class, incorporated villages, and incorporated villages for special purposes.[3]

SEC. 3. *Cities of the first class.* All existing municipal corporations, organized as cities of the first class, shall be deemed cities of the first class.

SEC. 4. *Cities of the second class.* All existing municipal corporations, organized as cities of the second class, shall be deemed cities of the second class until advanced to the grade of cities of the first class, in the manner provided in this act.

SEC. 5. *Villages.* All existing municipal corporations, organized as incorporated villages, shall be deemed incorporated villages until advanced to the grade of cities of the second class, in the manner provided in this act.

SEC. 6. *Villages for special purposes.* All existing municipal

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1 "The General Assembly shall provide for the organization of cities and villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power." *Constitution of Ohio*, Art. XIII, § 6.

2 Municipal Act of 1852, § 1; 3 Curwen, ch. 1184.
It is competent for the legislature to change, modify, enlarge, or restrict the charter of municipal corporations, under proper limitations. In this respect there is a well settled distinction between private and public corporations. *Marietta* v. *Fearing*, 4 O. 427.

3 Act of 1852, § 40.

corporations, organized as special road districts, shall be deemed incorporated villages for special purposes until advanced to the grade of incorporated villages, in the manner provided in this act.

Sec. 7. *Population requisite for cities and villages.* No city of the second class shall be advanced to the grade of a city of the first class until it shall have attained a population of twenty thousand. No incorporated village shall be advanced to the grade of a city of second class until it shall have attained a population of five thousand. No incorporated village for special purposes shall be advanced to the grade of an incorporated village until it shall have attained a population of five hundred; and no incorporated village shall hereafter be organized until the inhabitants to be embraced in it exceed in number one thousand.[1]

Sec. 8. *Bodies politic and corporate.* All municipal corporations now organized and established, including special road districts, and all municipal corporations organized under the provisions of this act, shall be and they are hereby declared to be bodies politic and corporate, under the name and style of the city of ——; the incorporated village of ——; the village of ——, incorporated for special purposes, as the case may be, and as such capable to sue and be sued, to contract and be contracted with, to acquire, hold and possess property, real and personal, and to have a common seal, and to change or alter the same at pleasure, and to exercise such other powers and have such other privileges as are conferred by this act.[2]

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[1] Under the act of 1852, § 41, the same population was requisite in the classification of cities.

The requirement as to population for an incorporated village for special purposes, under this act, is that there shall be at least fifty qualified voters residing on the territory. *Infra*, § 14.

The mode of ascertaining the population for the purpose of advancement, is provided in sections 35 and 42.

The power to do indirectly that which can not be done directly,—that is, to secure the organization of an incorporated village with a population of only five hundred, by first organizing it as an incorporated village for special purposes,—was conferred by an amendment to the bill. The bill provided that the advancement should not be made until a population of one thousand was attained.

[2] Act of 1852, § 18.

"In determining the powers of municipal corporations, it is right and proper to allow them the exercise of all powers expressly granted, and such others as may be necessary to carry the powers expressly granted into execution. Beyond this the court ought not to go, and should there be error in construing those powers, it is better to err in restricting than in extending them." Hitchcock, J., in *Collins* v. *Hatch*, 18 O. 523; 5 O. S. 61.

But a different rule of construction ought to prevail where a corporation is endeavoring not to extend its powers to the injury of others, but sets up by way of defense to an action brought against it, that it has itself been guilty of usurpation of power. There, in cases of doubt, the power ought to be upheld. *Bank of Chillicothe* v. *Chillicothe*, 7 O. 2 pt. 31.

In the case of *Morrill, City Solicitor*, v. *Cincinnati*, the question of the power of the City Council to make contracts under which grounds were to be leased to the city for park and other purposes, was much considered by the Superior Court of Cincinnati, in General Term, and the authority

CHAPTER II.

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24. First election of officers.
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SEC. 9. *Organization of incorporated villages.* The inhabitants residing on any territory laid off into town or village lots, a plat of which has been made, acknowledged and recorded, and which territory is not adjoining any city or incorporated village,[1] may be organized into an incorporated village, or an incorporated village for special purposes, in the following manner:

SEC. 10. *Application therefor.* Application for such purpose shall be made by petition, in writing, signed by not less than thirty of the legal voters of this state residing on such territory, addressed to the commissioners of the county in which such territory shall be located.

SEC. 11. *Character of petition.* Such petition shall accurately describe the territory to be embraced in the proposed corporation, and may include adjacent territory not laid off into lots; it shall state the supposed number of inhabitants residing thereon, and the kind of corporation they desire should be established. It shall also contain the name or names of some person or persons authorized to act in behalf of the petitioners, as their agent or agents, in the premises, and

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maintained. 1869, MS. "This broad express grant of power," said Taft, J., referring to section eighteen of the act of 1852. "'to acquire, hold, and possess property, real and personal,' must be regarded as co-extensive with the legitimate purposes of the corporation. The Supreme Court of Ohio, in 10 O. S. 377, said of a similar provision in the act relating to railroads: 'It can only be limited in regard to the purposes for which the property is acquired.'" And the court held, that this general grant of power was not limited by implication by the creation of a Board of Trustees of the Water Works or a Board of Education, with special power of negotiating the purchase of premises for a reservoir or a school-house.

Where there is no restraining clause in the charter of a municipal corporation, such corporation may dispose of any property which it has the right to acquire. And where the council is authorized to sell and transfer stock, as soon as it can be sold at par value, this authorizes a sale on credit. *Newark* v. *Elliott*, 5 O. S. 113.

If a town corporation is invested with the usual powers conferred upon such bodies, and borrows money for the use of the town, such contract is binding upon the corporation, and it must repay, although no express power to borrow money be given in the charter. *Bank of Chillicothe* v. *Chillicothe*, *sup.*

[1] The provision, that the territory shall not adjoin any city or incorporated village, seems not to have been made in the Act of 1852.

the name proposed for such corporation, and it shall be accompanied by an accurate map of the territory therein described.[1]

SEC. 12. *Presentation, etc., of petition.* Such petition shall be presented to the board of commissioners at a regular session thereof, and when so presented, such board shall cause the same to be filed in the office of the county auditor, to be there kept subject to the inspection of any person or persons interested. The commissioners shall also, at the time of the filing of such petition, determine upon and communicate to the agent or agents of such petitioners, the time and place for the hearing thereof, which time shall be not less than sixty days after the date of such filing. Thereupon the said agent or agents shall immediately cause a notice, containing the substance of said petition, and stating the time and place where the same will be heard, to be published in some newspaper published and of general circulation in the county, for the period of six consecutive weeks, and also a copy of the said notice to be posted up in some conspicuous place within the limits of the proposed corporation not less than six weeks prior to the time fixed for the hearing of said petition.[2]

SEC. 13. *Proceedings on petition.* Every such hearing shall be public, and may be adjourned from time to time and from place to place, according to the discretion of the commissioners, and any person interested may appear, in person or by attorney, and contest the granting of the prayer of said petition, and affidavits in support of or against the prayer of the petition, which may be prepared and submitted, shall be examined by said commissioners, and they may, in their discretion, permit the agent or agents of the said petitioners to amend said petition or change the same, except that no amendment shall be permitted whereby territory not before embraced shall be added without appointing another time for hearing and requiring new notices to be given as above provided.[3]

SEC. 14. *Duty of commissioners.* If the commissioners, upon the hearing of the petition, shall find that it contains all the matters required, and that its statements are true; that the name proposed for such corporation is appropriate; that the limits thereof have been accurately described, and that the same are not unreasonably large or small, and the map or plat thereof is accurately made; that the persons whose names are subscribed thereto are legal voters residing on said territory, and shall be further satisfied that the said notice has been given by the said agent or agents as required, and, if the petition be for an incorporated village, that there is the requisite population for such corporation, or, if the petition be for an incorporated village for special purposes, that at least fifty qualified voters reside on said territory, and if, moreover, it shall be deemed right and proper, in the

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[1] Act of 1852, § 2.

[2] Act of 1852, § 3.

[3] Act of 1852, § 4, prohibited the changing of the character of the proposed incorporated village, from general purposes to special, or from special to general, without appointing another time for hearing, and requiring new notice to be given.

discretion of said commissioners, that such petition be granted, they shall cause an order to be entered upon their journal, to the effect that the corporation as named and asked for in the petition, may be organized.[1]

SEC. 15. *Transcript of proceedings.* The commissioners shall then cause a complete certified transcript of all their proceedings and orders to be made out, which transcript they or a majority of them shall sign, and cause to be delivered, together with the petition and map accompanying said petition, and all the other papers on file, to the recorder of the county.[1]

SEC. 16. *Duty of recorder.* The said recorder shall file the same in his office, and immediately after the expiration of sixty days after such filing, unless enjoined as hereinafter provided, he shall make a record of the said petition, transcript and map, in the proper book of records in his office, and preserve in his office the original papers as delivered to him by the commissioners, having certified thereon that the said transcript and map are properly recorded.[2]

SEC. 17. *Transcripts to be certified, etc.* As soon as said record is made, the recorder shall make out and certify, under his official seal, two transcripts thereof, one of which he shall forward to the secretary of state, and the other he shall, on demand, deliver to the agent or agents of said petitioners, with a certificate thereon that the duplicate thereof has been forwarded to the secretary of state as above provided.[2]

SEC. 18. *Corporation complete.* So soon as said record shall be made, the inhabitants residing within the limits of the territory described in the petition, shall be deemed and held to be an "incorporated village for special purposes," or "an incorporated village," as the case may be, to be organized and governed under the provisions of this act; and so soon as such corporation shall be organized by the election of officers as hereinafter provided, notice of its existence as such shall be taken in all judicial proceedings in this state.[3]

SEC. 19. *Record thereof.* The commissioners shall cause to be entered upon their journal a full and complete record of all their orders and proceedings in relation to the incorporation of villages as herein provided.[4]

SEC. 20. *Application for injunction.* Any person interested may, at any time within the period of sixty days from the day of filing the said transcript of the commissioners and papers with the recorder as before provided, make application, by petition, to the court of common pleas of the county, or to the judge thereof if in vacation, setting forth in such petition the errors complained of, or the inaccuracy of said boundaries, or both, and praying an injunction restraining said recorder from making the said record and certifying the transcripts above required.[5]

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[1] Act of 1852, § 5.

[2] Act of 1852, § 5, provided for the record "as soon as may be" after delivery to the recorder.

[3] Act of 1852, § 6. [4] Original. [5] Act of 1852, § 7.

SEC. 21. *Notification to recorder, etc.* He shall also, immediately upon the filing of such petition, give notice in writing thereof to said recorder, and to the agent or agents of the said petitioners; and the recorder on receiving such notice, shall not record said transcript and map, or certify the same as above provided, until after the final hearing and disposition by the court or judge of the said petition.[1]

SEC. 22. *Recorder to transmit papers to clerk.* On receiving notice as above provided, the recorder shall forthwith transmit to the clerk of the court where the petition is pending, all the papers relating to said proceeding filed with him as required by section fifteen, to be used on the hearing of said petition.[2]

SEC. 23. *Duty of court or judge, etc.* It shall be the duty of the said court or judge to hear said petition in a summary manner, and at his discretion, to hear evidence, and if no error shall be found in said proceedings, and no inaccuracy in the boundaries of such proposed corporation, the court or judge shall dismiss said petition, and thereupon the clerk of the court shall return the papers to the recorder, with a transcript of the order of the court, and the recorder shall then immediately record the said certified transcript, petition, map and order of the court, and forward and deliver the same as above provided. But if error shall be found in the said proceedings, or the boundaries are so inaccurately described as to render indefinite and uncertain the limits or extent of such proposed corporation, then the court or judge shall make an order enjoining said recorder from making a record of the said transcript or map, but such order shall be no bar to any subsequent application for the foregoing purpose to the county commissioners.[3]

SEC. 24. *First election of officers.* The first election of officers of such corporation shall be at the first annual spring election after the same has been created, and the place for holding such election shall be fixed by said agent or agents, and notice thereof shall be by them given by posters, printed or in writing, at three or more public places within the limits of the corporation. Said election shall be conducted and the officers thereof chosen and qualified in the same manner prescribed by law for the election of township officers.[4]

SEC. 25. *Procedure when territory lies in two or more counties.* When the inhabitants residing upon adjacent portions of territory, in two or more counties, laid off into town lots, a plat or plats of which have been made, acknowledged and recorded, desire to be organized into an incorporated village or into an incorporated village for special purposes, the petition therefor shall be made to the commissioners [of the county] in which the largest number of the qualified voters of the

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[1] Act of 1852, § 7. [2] Original.

[3] Under act of 1852, § 7, the record having been made as required by § 5, the court was required to make an order annulling the record, and the recorder to indorse the order so made on the record.

[4] Act of 1852, § 8, provided for a special election of officers, to continue in office until the first annual spring election after such incorporation.

proposed village shall reside at the time of the filing of such petition, and a statement to that effect shall be set forth in the petition. The transcript of the proceedings of the commissioners and the map or plat accompanying the same, shall be recorded in the county in which the petition is filed, at the time and in the manner provided for in other cases; and the recorder of such county shall, within ten days thereafter make a certified transcript of such record for each of the counties in which any portion of the territory is situated, and forward the same to the respective recorders thereof, to be by them recorded in the manner that the original papers are required to be recorded.[1]

SEC. 26. *Same.* In all other respects the proceedings to establish such corporation, or to review the action of the commissioners, shall be as provided in cases where all the inhabitants residing on the territory to be organized into such corporation reside in one county.[1]

SEC. 27. *Jurisdiction of officers.* In all cases in which the jurisdiction of officers of municipal corporations is made co-extensive with the county in which such corporations are situated, the jurisdiction of the like officers of any municipal corporation embracing territory situated in two or more counties, shall be co-extensive with each of the counties in which any part of such territory shall be located.[1]

SEC. 28. *Fees of officers.* Every officer shall be entitled to receive, for the services required to be performed by him under the preceding sections of this chapter, the same fees he would be entiled to receive for similar services in other cases, and unless paid in advance, upon demand of the agent or agents of said petitioners, he shall not be required to perform the said services.

CHAPTER III.

OF THE MANNER INCORPORATED VILLAGES FOR SPECIAL PURPOSES MAY BE ADVANCED TO THE GRADE OF INCORPORATED VILLAGES.[2]

SECTION.
29. Advance of grade, to incorporated village.
30. Application therefor.
31. What petition shall contain.
32. Trustees to fix time of holding election.
33. Conduct of the election, etc.
34. Effect of negative vote.
35. Procedure on affirmative vote.
36. Record of proceedings, transcript, etc.
37. Duty of recorder, judge, etc., same as in case of incorporated village.
38. Corporation complete.
39. First election of officers, etc.

SEC. 29. *Advance of grade, to incorporated village.* Whenever the inhabitants of any incorporated village for special purposes, or any portion thereof, desire to be advanced to an incorporated village, they may proceed in the following manner:

SEC. 30. *Application therefor.* Application for such purpose shall

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[1] Act of February 23, 1858; 4 Curwen, ch. 1813.

[2] The manner of advancing an incorporated village for special purposes to the grade of an incorporated village, is original. See act of February 28, 1861; 58 O. L. 23.

be made to the trustees of such incorporated village for special purposes, by petition, in writing, signed by at least fifty of the legal voters of such incorporated village for special purposes, a majority of whom shall be freeholders.

SEC. 31. *What petition shall contain.* Such petition shall set forth that such incorporated village for special purposes, contains the required population for an incorporated village, and that it is the desire of the inhabitants to be advanced to the grade of an incorporated village, and it shall ask that an election be held to obtain the sense of the electors upon such advancement.

SEC. 32. *Trustees to fix time of holding election.* The trustees upon receiving such petition and being satisfied that the persons whose signatures are thereto are electors and reside within such corporation, and that a majority of them are freeholders, shall fix upon the time and place for holding such election, and shall cause notice thereof to be given, by posters, printed or in writing, for the period of at least three weeks prior to such election, in three or more of the most public places within such corporation.

SEC. 33. *Conduct of the election, etc.* The trustees of such corporation shall be the judges of said election, and the said election, in all respects, shall be conducted in the same manner, so far as practicable, as is prescribed for the conduct of elections for township officers, and the ballots shall contain, in writing or in print, or both, the words "for incorporated village," or the words "against incorporated village."

SEC. 34. *Effect of negative vote.* If it shall appear that the number of votes cast "for incorporated village" is not a majority of all the votes cast at said election, then no further proceedings shall be had; but such result shall not be a bar to any future petition to the trustees in relation to the same subject.

SEC. 35. *Procedure on affirmative vote.* If it shall appear that the number of votes cast "for incorporated village" is a majority of all the votes cast at said election, the trustees shall then, within a reasonable time, cause a census to be taken, by some suitable person to be by them appointed for such purpose, of all the inhabitants of such corporation. The person taking such census shall make and subscribe a certificate that he believes the same is correct, and he shall be sworn or affirmed thereto by one of the said trustees or justice of the peace of the county.

SEC. 36. *Record of proceedings, transcript, etc.* The said trustees shall cause to be entered on their journal an accurate minute of all their proceedings, together with the number of votes cast at said election "for incorporated village" and "against incorporated village," and the whole number of votes cast, and also the whole number of inhabitants of such corporation as ascertained by such census. They shall also, in case the census taken shows that such corporation contains the required population for an incorporated village, make out a complete certified transcript of all journal entries and proceedings by them had in the premises, and shall sign their names, or a majority of

them, thereto, and deliver the same, together with the said census and poll-book and tally-sheet, to the recorder of the county.

SEC. 37. *Duty of recorder, judge, etc., same as in case of incorporated village.* The duty of the recorder in relation thereto, and in case of petition by the prosecuting attorney to prevent such advancement being completed, the duty of the prosecuting attorney and the court or judge, shall be the same, and the same proceedings shall be had, so far as applicable, as in the case of the organization of an incorporated village, or an incorporated village for special purposes, under chapter two of this act.

SEC. 38. *Corporation complete.* So soon as the recorder shall make the record and certify and forward to the secretary of state a transcript of the same, such corporation shall be deemed and held to be an incorporated village, bearing the name of the said incorporated village for special purposes, to be organized and governed under the provisions of this act, and so soon as such incorporated village shall be actually organized by the election and qualification of its officers, as hereinafter provided, notice of its existence as such shall be taken in all judicial proceedings in this state.

SEC. 39. *First election of officers, etc.* The first election of officers of such incorporated village, shall be at the first annual spring election next ensuing the certifying and forwarding of the transcript by the county recorder, and the said trustees of such incorporated village for special purposes shall remain in office until the officers of the new corporation are elected and qualified, and by-laws, regulations and ordinances, adopted for the government of such incorporated village for special purposes, shall remain in force so far as may be consistent with the provisions of this act, until annulled or repealed by the council of such incorporated village; and the said trustees shall, upon demand, after the expiration of their term of office, deliver to the clerk of such incorporated village all the books of record, documents and papers in their possession as the trustees of such incorporated village for special purposes.

CHAPTER IV.

OF THE MANNER IN WHICH INCORPORATED VILLAGES MAY BE ADVANCED TO CITIES OF THE SECOND CLASS; AND CITIES OF THE SECOND CLASS ADVANCED TO CITIES OF THE FIRST CLASS.[1]

SECTION.		SECTION.	
40.	Advancement of villages and cities of second class.	44.	Declaration of Council on affirmative vote, etc.
41.	Certificate of clerks and judges.	45.	Record, etc., same as in creation of incorporated villages.
42.	Census to be taken, etc.	46.	First election of officers.
43.	Effect of negative vote, etc.		

SEC. 40. *Advancement of villages and cities of second class.* Whenever one hundred resident freeholders of any incorporated vil-

[1] This chapter provides a new method of advancing incorporated villages to cities, and cities of the second class to cities of the first class. See act of March 25, 1854; 4 Curwen, ch. 1438.

lage, or two hundred resident freeholders of any city of the second class, shall petition the council of the corporation in which they reside, setting forth that they desire such village to be advanced to the grade of a city of the second class, or such city of the second class to be advanced to the grade of a city of the first class, and that they have the requisite population for such advancement, the council shall cause notice to be given by the mayor as in other cases, that at the next annual election for officers of such city or village, the electors thereof may vote for or against the advancement by writing or printing, or both, on their ballots the words "for advancement," or the words "against advancement."

SEC. 41. *Certificate of clerks and judges.* The clerks and judges of the election shall forthwith certify in duplicate to the clerk of the corporation the whole number of votes given at such election; the number of votes given "for advancement" and number of votes "against advancement."

SEC. 42. *Census to be taken, etc.* If a majority of all votes cast at such election shall be in favor of such advancement, the council, if such corporation shall not have the required population according to the last federal census taken prior to the election, shall forthwith cause a census to be taken by one or more suitable persons, of all the inhabitants of such city or village, in which census the full name of each person shall be plainly written, alphabetically arranged and regularly numbered in one complete series; which list shall be certified and sworn or affirmed to by the person or persons taking the same, and filed with the clerk of the corporation.

SEC. 43. *Effect of negative vote, etc.* The clerk shall lay the said certificates of election and census before the council at their next regular meeting after the same shall have been filed in his office, and if it shall appear that all the votes cast at such election "for advancement" are not a majority of all the votes cast at said election, or that the corporation does not contain the requisite number of inhabitants to be advanced in grade, then no further proceedings shall be had.

SEC. 44. *Declaration of council on affirmative vote, etc.* If it shall appear that the corporation contains the requisite number of inhabitants to be advanced, the council shall thereupon, by resolution, declare that the inhabitants of the corporation have decided to be advanced to a corporation of the next higher grade, and direct the clerk to certify said resolution to the recorder of the county.

SEC. 45. *Record, etc., same as in creation of incorporated villages.* The duty of the recorder in relation thereto shall be the same, so far as applicable, as provided in chapter two, in the case of the creation of an incorporated village or an incorporated village for special purposes; and so soon as the recorder shall make the record and certify and forward to the secretary of state a transcript of the same, the said corporation shall be deemed and held to be a city of the second or first class, as the case may be, to be organized and governed under the provisions of this act; and so soon as such corporation shall be actually organized, by the election and qualification of officers, notice

of its existence as such, shall be taken in all judicial proceedings in this state.

SEC. 46. *First election of officers, etc.* The first election of officers of the new corporation shall be at the first annual spring election next ensuing the proceedings had as aforesaid, and the officers of the old corporation shall remain in office until the officers of the new corporation are elected and qualified; and the ordinances, by-laws and regulations adopted by the old corporation shall continue in force, so far as may be consistent with the provisions of this act, until annulled or repealed by the council of the new corporation; and the council and officers of the old corporation shall, upon demand, after the expiration of their term of office, deliver to the proper officers of the new corporation, all the books of record, documents and papers in their possession belonging to the old corporation.

CHAPTER V.

INCORPORATED VILLAGES FOR SPECIAL PURPOSES.

SECTION.
47. Trustees of village for special purposes.
48. Their term of service.
49. Their powers and duties.
50. Vacancy, how filled, etc.
51. Duty of trustees.
52. Limitation of power.
53. Further powers of trustees.
54. Powers as to by-laws, etc.
55. Compensation of marshal.
56. Jurisdiction of justices of the peace.
57. Perpetuity of existing officers, ordinances, etc.
58. Duty of clerk as treasurer—oath of office.

SEC. 47. *Trustees of village for special purposes.* The corporate authority of incorporated villages for special purposes shall be vested in three trustees, who shall be qualified electors residing within the limits of such corporation, and who shall hold their office for three years, except as herein provided, and until their successors are elected and qualified.[1]

SEC. 48. *Their term of service.* At the first meeting of the trustees elected under the provisions of this act, they shall determine, by lot, the term of service of each trustee so elected, so that one shall serve for one year, one for two years, and one for three years, and at every succeeding annual election one trustee shall be elected to serve for three years.[1]

SEC. 49. *Their powers and duties.* The said trustees shall have power to appoint, either from their own body or from the electors of the corporation, a clerk, who shall act as treasurer, and a marshal, who shall act as supervisor, and such other police officers as shall be necessary, and by proper by-laws, resolutions and ordinances prescribe the duties and compensation of the officers so appointed, and may remove any such officers and appoint others at their discretion.[1]

SEC. 50. *Vacancy, how filled, etc.* The said trustees shall have power to fill any vacancy which may happen in their body from the

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[1] Act of 1852, § 44, as amended April 2, 1859; 4 Curwen, ch. 2004.

qualified electors of the corporation, and the person so appointed shall continue in office until the next regular election and until his successor is elected and qualified; any two of said trustees may transact business; but notice of any meeting for the transaction of business must be given to all.[1]

SEC. 51. *Duty of trustees.* The said trustees shall have the exclusive jurisdiction of all public roads, streets, alleys, sewers and drains, constructed or to be constructed, within the limits of the corporation; and they shall have power to construct and keep in repair bridges and sidewalks; to lay out, establish, open, widen, improve, straighten, keep in order and repair roads, streets and alleys; to open and construct and keep in order and repair sewers and drains; to enter upon and take for the purposes aforesaid, when necessary, land and material, and to assess and collect a charge for the construction, improvement and repair of any such road, street or alley.[2]

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[1] Act of April 2, 1859; 4 Curwen, ch. 2004.

[2] Act of 1852, § 45, as amended March 11, 1853; 3 Curwen, ch. 1248. For the manner of proceeding to appropriate private property to the use of the incorporated village for special purposes, see post, ch. 47.

A village incorporated for the special purpose of being a road district, is not one of the municipal corporations whose consent to the construction of a street railway is required by the fifth section of the street railway act of April 10, 1861; 58 O. L. 66. *Street Railway* v. *Cumminsville*, 14 O. S. 523.

Nor is the consent of the trustees of such a corporation necessary, under the 7th section of that act, when the railway is laid upon the road-bed of a turnpike company, and in pursuance of an agreement with such company. *Ib.*

Authority to lay down the necessary structure for a street railway in a common highway or street, and to run cars thereon for the carriage of passengers for hire, may be lawfully granted to a company incorporated for that purpose, when no private right of the adjoining lot-owners is thereby impaired. *Ib.*

The legislature may authorize the occupation of the easement, originally acquired by grant or appropriation, in any manner calculated to further the general objects of the acquisition, but may not divert it to purposes which exclude the original uses, or lay additional burdens upon the land, or destroy or impair the incidental easements of adjoining lot-owners, in the street or highway. *Ib.*

This interest of adjoining lot-owners is properly protected by the Constitution, and subject to be taken or appropriated only upon the condition that compensation is made. *Crawford* v. *Delaware*, 7 O. S. 459, followed and approved. *Ib.*

When the public authorities have taken possession of a street or highway, and regularly defined the interests and improvements necessary for the use of the public, by establishing grades, etc., lot-owners have the right to make their improvements in reference thereto, and no subsequent change, which obstructs or impairs access to such improvements, can be lawfully made without compensating for the injury. *Ib.*

A finding of the court that such injury will result from laying a street railroad track near the side-walk in front of the owner's house, shop, etc., is in no way qualified or affected by the further fact, also found, that when the interests of the company, and of the general traveling public are also taken into the account, the location would be as little injurious as in any other part of the highway. *Ib.*

SEC. 52. *Limitation of power.* No order directing the opening of any new road, street or alley, or the taking of any land for the improvement, straigthening or changing any road, street or alley, shall be made by said trustees, nor shall any ordinance be passed for such purpose, unless they shall all concur therein; and no order shall be made for the improvement or repair of any road, street or alley, except on the petition of two-thirds of the owners of the lots or land through or by which such road, street or alley, or part thereof to be improved or repaired, shall pass.[1]

SEC. 53. *Further powers of trustees.* The said trustees shall have power to provide as follows:[2] 1. To protect the property and persons of the inhabitants against injuries and destruction by fire, thieves, robbers, burglars, and all other persons violating the public peace. 2. To suppress riots, noise and disturbance, gambling, drunkenness, and indecent and disorderly assemblages and conduct. 3. To punish all lewd and lascivious behavior in the streets, alleys and other public places. 4. To suppress and restrain disorderly houses and houses of ill-fame. 5. To regulate, restrain and prohibit ale, beer and porter houses or shops, and houses and places of notorious and habitual resort for tippling and intemperance. 6. To regulate taverns and other houses of public entertainment. 7. To regulate or prohibit theatrical exhibitions and public shows, and all exhibitions of whatever name or nature for which money is demanded or received; but public lectures on historic, literary or scientific subjects shall not come within the provisions of this section. 8. To prevent injury or annoyance from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated. 9. To acquire real estate for public halls and schoolhouses and to erect the necessary buildings thereon. 10. To protect all public buildings and property within or owned by the corporation. 11. To provide public cemeteries and for the improvement and protection thereof, and to regulate the burial of the dead; and 12. To provide for the comfort, convenience and safety, preserve the health and peace, promote the good order and prosperity, and improve the morals of the inhabitants of the corporation.[3]

SEC. 54. *Powers as to by-laws, etc.* The said trustees shall have power to make and publish, in the same manner as other corporations, such by-laws, resolutions and ordinances as to them shall seem neces-

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[1] Under the act of 1852, § 46, as amended March 12, 1253; 3 Curwen, ch. 1251, it was sufficient for two-thirds of the "resident owners" to sign the petition.

[2] The powers granted to incorporated villages for special purposes, in this section, do not seem to have been granted heretofore.

[3] Where the corporate authorities had power "to make, ordain and publish all such by-laws and ordinances, consistent with the constitution and laws of this state, and of the United States, as they shall deem necessary for the well regulation, interest, health, cleanliness, convenience and advantage of said borough and its inhabitants; to impose fines forfeitures and penalties (not exceeding fifty dollars) upon each and every person offending against the laws and ordinances, which may

sary to carry into effect the foregoing powers; and shall have in all respects, the like rights and remedies in the enforcement of such by-laws, resolutions and ordinances, as are herein given to other municipal corporations. All by-laws and ordinances shall require for their adoption the concurrence of all the trustees.[1]

SEC. 55. *Compensation of marshal.* The services performed by the marshal in his capacity of supervisor, under the direction of the trustees, shall be settled and paid for by the trustees of the proper township or townships as in other cases; and for his services as marshal he shall receive the same fees as marshals in other municipal corporations for like services. The trustees, in their capacity as trustees, shall not receive any compensation.[2]

SEC. 56. *Jurisdiction of justices of the peace.* Any justice of the peace of the township or townships in which the corporation may be situated, shall have jurisdiction in all prosecutions for the violation of any ordinance thereof, with full power to hear and determine the same and impose the prescribed penalty; and all fines, penalties and forfeitures collected by any justice of the peace for the violation of any ordinance, shall be by him paid over to the clerk of the corporation.

SEC. 57. *Perpetuity of existing officers, ordinances, etc.* All trustees and officers of corporations heretofore organized and now existing as special road districts, shall continue in office as trustees and officers of incorporated villages for special purposes, as herein established, until their successors are elected and qualified;[3] and all by-laws, resolutions and ordinances of such special road districts shall continue in force as by-laws, resolutions and ordinances of the incorporated village for special purposes, until repealed.

SEC. 58. *Duty of clerk as treasurer—oath of office.* The clerk, in his capacity as treasurer, shall be entitled to demand and receive all moneys due or belonging to the corporation, and shall disburse the same on the order of the trustees; and the clerk and marshal shall each give bond to the corporation for the faithful performance of their

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be made as aforesaid," etc.; and passed an ordinance to prevent the running at large in the town of hogs and other animals: *Held*, that the ordinance could not be adopted, under these general powers, because in contravention of a general law of the state relating to astray animals, that provided, "that no person shall be allowed to take up any neat cattle, sheep or hogs, after the first day of April, and before the first day of November annually."

Neither could the ordinance be justified under the power "to require and compel the abatement of nuisances," because it is manifest that such is not the nuisance spoken of. Said Hitchcock, J., "It is common in our legislature to grant expressly to towns corporate, the power to do what in this case has been attempted to be done, that is, to prohibit horses, cattle and swine from running at large. Such being the practice, it is right to presume, where this power is not expressly granted, it was intended it should not be exercised." *Collins* v. *Hatch*, 18 O. 523. And see § 199, and authorities cited.

[1] *Infra*, chs. 10, 11; Act of 1852, § 45.

[2] *Infra*, § 143.

[3] *Infra*, §§ 70, 728.

duties, in such sum as the trustees may require. The trustees and other officers shall, before entering on their duties, take an oath of office.[1]

CHAPTER VI.

OFFICERS OF MUNICIPAL CORPORATIONS.

Section.		Section.	
59.	Village officers to be elected.	65.	Duties not defined in this act.
60.	Officers of cities of second class.	66.	Vacancies, how filled.
61.	Officers of cities of first class.	67.	Vacancy on removal.
62.	Their term of office.	68.	Council to prescribe compensation.
63.	Other requisite officers.	69.	No change of emoluments during term of office.
64.	Appointments, how made.		

SEC. 59. *Village officers to be elected.* The officers of incorporated villages shall consist of a mayor, clerk, treasurer and marshal, all of whom shall be elected; and the council shall have power, whenever deemed expedient, to create, by ordinance, the office of solicitor and street commissioner, and provide for their election in the same manner the other officers of the corporation are elected.[2]

SEC. 60. *Officers of cities of second class.* The officers of cities of the second class shall consist of a mayor, clerk, treasurer, city commissioner, who shall be superintendent of streets, marshal and solicitor, all of whom shall be elected; and the council shall have power, whenever deemed expedient, to create, by ordinance, the office of auditor, civil engineer, fire engineer, and superintendent of markets, and provide for their election in the same manner the other officers of the corporation are elected.[3]

SEC. 61. *Officers of cities of first class.* The officers of cities of the first class shall consist of a mayor, solicitor, treasurer, street commissioner, police judge, prosecuting attorney of the police court, clerk of the police court, all of whom shall be elected; and a fire engineer, superintendent of markets, civil engineer and chief of police, to be appointed by the mayor with the assent of the council; and a

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[1] "Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation to support the Constitution of the United States, and of this state, and also an oath of office." Const., Art. XV, § 7. In *State* v. *Kennon*, 7 O. S. 546-558, the court say, that by force of the constitutional provision, it is the duty of an officer to take such oath whether the same be prescribed by statute or not.

The oath of office is a mere ministerial act, and not a condition precedent to entering upon the duties of the office, nor will the omission to take it by the principal in an official bond discharge the sureties, unless otherwise directed by statute. *State* v. *Findley*, 10 O. 51.

[2] Act of 1852, § 47, as amended March 12, 1862 (59 O. L. 23); § 48, as amended February 5, 1861 (58 O. L. 6); § 50, as amended February 21, 1867 (64 O. L. 21).

[3] Act of 1852, § 69, as amended March 25, 1862; April 29, 1862; March 15, 1869 (66 O. L. 25); May 13, 1868 (65 O. L. 186); Act of 1852, § 57, *et seq.*

clerk and auditor, to be elected by the council; and the council shall have power to provide, by ordinance, for the election or appointment by the mayor, of as many lieutenants of police as may be deemed necessary.[1]

SEC. 62. *Their term of office.* All officers who are elected shall serve for two years and until their successors are elected and qualified, and all officers who are appointed shall serve for one year and until their successors are appointed and qualified.[2]

SEC. 63. *Other requisite officers.* The council shall have power to provide for the appointment, or election by the qualified electors of the corporation, wards or districts, as the case may require, of all such other officers as shall be deemed necessary for the good government of the corporation, and the full execution of its corporate powers.[3]

SEC. 64. *Appointments, how made.* All appointments of officers of municipal corporations created by law or ordinance, shall be made by the mayor, by and with the advice and consent of the council, and the concurrence of a majority of all the members elected shall be required to confirm any such appointment, and the names of those voting, and for whom they voted on the vote resulting in an appointment, shall be recorded.[4]

SEC. 65. *Duties not defined in this act.* All officers whose powers and duties are not defined in this act, shall perform such duties, and exercise such powers, as shall be prescribed by ordinance.[5]

SEC. 66. *Vacancies, how filled.* All vacancies in offices filled by appointment, and all other vacancies occurring within sixty days prior to the annual corporation election, shall be filled by appointment, as in other cases; and such appointment shall be for the unexpired term and until a successor is elected and qualified; and all elections to fill vacancies shall be for the unexpired term. All vacancies in any other office created by this act, shall be filled in the manner above provided.[6]

SEC. 67. *Vacancy on removal.* When any officer shall remove without the limits of the corporation, such removal shall be deemed a vacating of the office; and the vacancy shall be filled as in other cases.[7]

SEC. 68. *Council to prescribe compensation.* Officers of municipal corporations, who are not prohibited from receiving compensation, or whose compensation is not by law provided for, shall receive such fees or compensation for their services as the council may prescribe.[1]

SEC. 69. *No change of emoluments during term of office.* The emol-

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[1] Act of 1852, § 71, as amended April 17, 1854 (4 Curwen, ch. 1451); § 72; § 61, as amended April 29, 1854; February 9, 1863 (60 O. L. 4).

[2] Act of 1852, §§ 47, 50, 61, 69, 71 and 72, as amended, *supra.*

[3] Act of 1852, § 61, as amended, *supra.*

[4] § 61 and 71, as amended, *supra.*

[5] Act of 1852, § 61, as amended February 9, 1863.

[6] Act of 1852, § 67, as amended April 5, 1856; 4 Curwen, ch. 1577.

[7] Act of 1852, § 53.

uments of no officer, whose election or appointment is required by this act, shall be increased or diminished during the time for which he may have been elected or appointed; nor shall any change of compensation affect any officer whose office shall be created under authority of this act, during his existing term, unless the office be abolished; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed to serve, when, during the same time, the emoluments have been increased.[1]

CHAPTER VII.

ELECTION OF OFFICERS.[2]

Section.		Section.	
70.	Elections first Monday of April.	75.	Returns of elections.
71.	Special elections.	76.	Clerk to make out abstract of votes.
72.	Council to designate places of election.	77.	Judges and clerk of election.
73.	Mayor to issue proclamation.	78.	Tie vote to be decided by lot.
74.	Who are qualified voters.		

Sec. 70. *Elections first Monday of April.* The first Monday in April shall be the regular annual period for the election of all municipal officers whose election is provided for in this act.

Sec. 71. *Special elections.* Special elections of members of the council, or of any officer chosen by the electors, shall be held within twenty days after a vacancy happens, (unless the regular day for municipal elections shall occur within sixty days after such vacancy,) at such time and place as the mayor shall direct, so that ten days' notice of such election be first given.

Sec. 72. *Council to designate places of elections.* The council of every municipal corporation shall designate the place or places for holding the regular elections; and in all corporations divided into wards, there shall be a place in each ward designated for holding elections.

Sec. 73. *Mayor to issue proclamation.* It shall be the duty of the mayor, in all elections for municipal officers, to issue a proclamation to the qualified voters of the corporation, or of the respective wards or districts, as the case may require, setting forth the time and places of election, and the officers to be chosen, and to cause such proclamation to be published in some newspaper printed in such corporation at least ten days previous to the election; or if no newspaper be published in the corporation, such notice may be given by posters.

Sec. 74. *Who are qualified voters.* Any person who, at the time of any election of municipal officers, would be a qualified voter, under the laws of the state, for county officers, and shall actually reside in the corporation or ward in which he offers to vote, shall be deemed a

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[1] Act of 1852, § 86.

[2] Act of 1852, § 99, as amended April 17, 1857; 4 Curwen, ch. 1787; § 100.

qualified voter; and all elections shall, in all respects, be held and conducted in the manner prescribed by law in case of township elections.[1]

SEC. 75. *Returns of elections.* The returns of all municipal elections in corporations which are divided into election districts or wards, shall be made to the clerk of the corporation, and shall be opened by him within the time prscribed as to the clerk of the court of common pleas in county elections.[1]

SEC. 76. *Clerk to make out abstract of votes.* The clerk, or in his absence or disability, some person to be selected by the council, shall call to his assistance the mayor of the corporation, or if there be no mayor, or the mayor be absent, disabled, or shall have been a candidate at such election, then any justice of the peace of the county, and shall, in his presence, make out an abstract and ascertain the candidates elected, in all respects as required by law of the clerk of the court of common pleas; and he shall, in like manner, make out a certificate as to each candidate so elected, and cause the same to be delivered to him or to be left at his usual place of abode.[1]

SEC. 77. *Judges and clerk of election.* At all elections in corporations which are not divided into election districts or wards, the mayor and council, any three of whom shall be a quorum, shall serve as judges, and the clerk shall serve as clerk; and after canvassing the votes which may be given at such election, shall declare the result, and the clerk shall make out and deliver to each person elected to any office in such corporation a certificate of such election.[1]

SEC. 78. *Tie vote to be decided by lot.* If more than the number of persons to be elected have an equal number of votes for the same office, then the officers whose duty it is to ascertain the persons elected, as above provided, shall determine, by lot, which of the persons receiving such equal number of votes shall be declared elected.[1]

CHAPTER VIII.

QUALIFICATIONS, OATH AND BOND OF OFFICERS.[2]

SECTION.
79. Electors only eligible—oath of office.
80. Bond of officers.
81. Bond and oath required within ten days.

SEC. 79. *Electors only eligible—oath of office.* All officers shall be electors of the corporation in which they may be elected or appointed; and before entering upon the duties of their office shall take an oath or affirmation to support the constitution of the United States, and the state of Ohio, and also an oath or affirmation of office.

SEC. 80. *Bond of officers.* Each officer named in chapter six, shall, before entering upon the duties of his office, execute a bond, to be approved by the mayor, (except the bond of the mayor shall be approved

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[1] Act of 1852, § 100. [2] Act of 1852, § 101.

by the council,) in such amount as the council shall, by ordinance, prescribe, conditioned for the faithful performance of the duties of his office, which bond (except the bond of the clerk) shall be deposited with the clerk of the corporation, and be by him, with the approval indorsed thereon, recorded and filed and preserved in his office, and the bond of the clerk shall, after being by him recorded, be deposited with the mayor.

SEC. 81. *Bond and oath required within ten days.* The council may require from each officer whose appointment is provided for in section sixty-three, a bond, with proper penalty and surety, for the faithful discharge of the duties of his office; and shall have power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required, for ten days after he shall have been notified of his appointment or election, vacant, and such vacancy shall be filled as in other cases of vacancy.

CHAPTER IX.

COUNCIL OF THE CORPORATION.

SECTION.
82. The council.
83. Members must be residents.
84. Prerogative.
85. First election—terms of office.
86. First meeting of council.
87. Organization of council.
88. Rights, duties, etc., of council.
89. Ex-officio members of council.
90. Times and place of meeting.
91. Compensation of members.
92. Members shall not be interested in contracts—penalty, etc.
93. Who ineligible.
94. Expulsion and removal.
95. Process to compel attendance.
96. Administration of oaths.

SEC. 82. *The council.* The legislative authority of all incorporated villages shall be vested in a council consisting of six members, except in incorporated villages divided into three or more wards, when such authority shall be vested in a council composed of two members from each ward. The legislative authority of all cities shall be vested in a council consisting of two members from each of the wards.[1]

SEC. 83. *Members must be residents.* The members of the council shall be residents of the corporation from which they shall be elected, and if the corporation be divided into wards, then residents of the ward for which they shall be elected.[2]

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[1] Act of 1852, § 47, as amended March 12, 1862 (59 O. L. 23), vested the corporate authority of incorporated villages "in one mayor, one recorder, and five trustees;" § 59.

[2] Act of 1852, § 59.

Under the charter of the city of Cleveland (which was divided into three wards), a council was elected on the 4th of March, 1850, to serve for one year, consisting of three aldermen elected at large, and three councilmen in each ward, who were required to "reside therein." On the 22d of that month the legislature amended the charter, dividing the city into four wards, and reducing the number of councilmen to two in each ward. By this division, some of the councilmen were thrown out of the wards for which they were elected. This amendment made no

SEC. 84. *Prerogative.* The council shall have the management and control of the finances, and of all the property, real and personal, of the corporation, except as may be otherwise provided for by law.[1]

SEC. 85. *First election—terms of office.* At the first election for council of incorporated villages under this act, three of the members shall be elected to serve for one year, and three for two years; and in such incorporated villages as may be divided into three or more wards, one of the members of the council for each of the wards shall be elected to serve for one year, and one for two years; and thereafter, in all incorporated villages, the members of the council shall be elected to serve for two years.[2]

SEC. 86. *First meeting of council.* It shall be the duty of the mayor, or in his absence or inability, then the clerk, at the hour of the first regular meeting of the council after the second Monday of April in each year, to call the members elect to that body and the members holding over, who may be assembled, to order, and as the members elect are called, they shall present their certificates and take the required oath or affirmation. In incorporated villages, the mayor shall be the president of the city council, but shall have no vote except in cases of a tie. In case of his absence from any meeting, the council shall appoint one of their number to perform his duties for the time being.[3]

SEC. 87. *Organization of council.* In all cities, if the members elect of the council and the members holding over, then present, shall constitute a quorum, they shall forthwith proceed to organize by electing, from their own number, a president, and a president pro tem., and such other officers necessary to perfect their organization as, by ordi-

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provision for an election under it until the next year, nor did it provide when it should take effect: *Held*, that the amendatory law had no effect upon the council then elected. The effect of its provisions, dividing the city into wards for election purposes, must be postponed until they could be called into requisition in future elections. If this were otherwise, yet, while the members of the council continued to act *de facto*, their proceedings would be valid. *Scovill* v. *Cleveland*, 1 O. S. 126.

"We do not suppose that this alteration of the wards had any more effect upon them, than an alteration of the legislative districts of the state before the expiration of the terms of the sitting members, with a view to a future election, would have upon the latter. The object would be the same in both cases. This view of the matter disposes of the question; but if it were otherwise, we are still equally clear that while they continued to act *de facto* in virtue of their election, their proceedings would be valid and binding. This principle has been expressly and repeatedly settled by the supreme court of this state. *State* v. *Constable*, 7 O. 1; *State* v. *Alling*, 12 O. 16; *State* v. *Jacobs*, 17 O. 143." Ranney, J. *Ib.* 126–129.

[1] Act of 1852, § 61, as amended April 29, 1854; February 9, 1863 (60 O. L. 4.)

[2] Act of 1852, § 47, as amended March 12, 1862 (59 O. L. 23.)

[3] Act of 1852, § 59; § 48, as amended February 5, 1861 (58 O. L. 6.)

nance, may be provided, and no business shall be transacted until such organization is effected.[1]

SEC. 88. *Rights, duties, etc., of council.* The council shall be the judge of the election, returns and qualifications of its own members, and shall determine the rule of its proceedings and keep a journal thereof, and may compel the attendance of absent members in such manner and under such penalties as may, by ordinance, be prescribed.[1]

SEC. 89. *Ex-officio members of council.* The city auditor, the city civil engineer, and the city solicitor shall have seats in the council, and be entitled to take part in its proceedings and deliberations on all questions relating to their respective departments, subject to such rules as the council shall from time to time prescribe, but without the right to vote. Said officers may be compelled to attend meetings of the council in the same manner as the members are.[2]

SEC. 90. *Times and place of meeting.* The council shall not be required to hold more than one regular meeting in each week; and the meeting of such council may be held at such time and place as may be by ordinance prescribed, and shall, at all times, be open to the public. The mayor, or any three members may call special meetings by notice to each member served personally, or left at his usual place of abode.[3]

SEC. 91. *Compensation of members.* The members of the council shall not receive any compensation for their services, except when acting as judges of election, when they shall receive such compensation as is provided by law for judges of election.[3]

SEC. 92. *Members shall not be interested in contracts—penalty, etc.* No member of the council or any officer of the corporation shall be interested, directly or indirectly, in the profits of any contract, job, work, or services, (other than official services to be performed for the corporation,) nor shall any member or officer act as commissioner, architect, superintendent or engineer in any work undertaken or prosecuted by the corporation during the term for which he was elected or appointed, or for one year thereafter. Any member of any city council or officer herein specified, offending against the provisions of this section, shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum not less than five hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than thirty days nor more than six months, or both, at the discretion of the court, and shall, in addition thereto, forfeit his office as such member of the council or officer of the corporation.[4]

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[1] Act of 1852, § 59; § 48, as amended February 5, 1861 (58 O. L. 6.)

[2] Act of April 12, 1858; 4 Curwen, ch. 1856.

[3] Act of May 5, 1868 (65 O. L. 127); April 4, 1862 (59 O. L. 40); February 9, 1863 (60 O. L. 4).

An adjourned meeting is but a prolongation of a regular meeting, and, it seems, no new notice is required. *Wiswell* v. *First Congregational Church*, 14 O. S. 31-40.

[4] Act of 1852, § 88; Act of March 3, 1860, § 11; 4 Curwen, ch. 2068.

SEC. 93. *Who ineligible.* No person shall be eligible as a member of the council, who at the same time holds any municipal office, or is an employe under the government of the corporation.[1]

SEC. 94. *Expulsion and removal.* Any member of the council may be expelled or removed from office by a concurrent vote of two-thirds of all the members elected, but not a second time for the same cause; any officer or agent, appointed by authority of this act, may be removed from office at the pleasure of the council by the vote of a majority thereof; any officer elected may be removed from office by a concurrent vote of two-thirds of all the members of the council elected. In case of elective officers, provision shall be made by ordinance for preferring charges and trying the same; but in no case shall such removal be made unless a charge in writing is preferred and an opportunity given to make defense.[2]

SEC. 95. *Process to compel attendance.* To enable the council fully to investigate charges against the members thereof, or other officers, or such other matters as they may deem proper, the mayor or police judge, at the request of the council, are hereby empowered to issue subpœna or compulsory process, to compel the attendance of persons and the production of books and papers before the council or any committee of the same.[2]

SEC. 96. *Administration of oaths.* In all cases in which the council are authorized to compel the attendance of witnesses for the investigation of matters which may come before them, the presiding officer for the time being shall have power to administer the requisite oaths; and such council shall have such power to compel the giving of testimony by the attending witnesses as is conferred on courts of justice.[3]

CHAPTER X.

ORDINANCES, RESOLUTIONS AND BY-LAWS—HOW ADOPTED AND PASSED.

SECTION.		SECTION.	
97.	Adoption of ordinances, etc.	101.	Statement as to publication.
98.	Must be read three times, unless, etc.	102.	Mode of publication.
99.	Subject, and amendment, of by-laws, etc.	103.	Effect of non-publication.
100.	Recording and publishing of by-laws, ordinances, etc.	104.	By-laws, ordinances, etc., as evidence.

SEC. 97. *Adoption of ordinances, etc.* All ordinances and resolutions, and all by-laws for the government of the council, shall require for their passage or adoption the concurrence of a majority of all the members elected, and the vote on their passage or adoption shall be

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[1] Act of April 4, 1862 (59 O. L. 40.)

[2] Act of 1852, § 67, as amended April 5, 1856; 4 Curwen, ch. 1577; § 53.

[3] Act of April 17, 1857, § 4; 4 Curwen, ch. 1787.

taken by yeas and nays and recorded on the journal; and no money shall be appropriated except by ordinance.[1]

Sec. 98. *Must be read three times, unless, etc.* All by-laws, resolutions and ordinances, of a general or permanent nature, shall be fully and distinctly read on three different days, unless three-fourths of all the members elected shall dispense with the rule; and the vote on such suspension shall be taken by yeas and nays and entered on the journal.[1]

Sec. 99. *Subject and amendment of by-laws, etc.* No by-law or ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no by-law or ordinance, or section thereof, shall be revived or amended, unless the new by-law or ordinance contain the entire by-law or ordinance, or section revived or amended; and the by-law or ordinance, section or sections, so amended, shall be repealed.[1]

Sec. 100. *Recording and publishing of by-laws, ordinances, etc.*

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[1] Act of 1852, § 88; § 103.

Art. II, § 16 of the constitution, provides that "every bill shall be fully and distinctly read on three different days, unless, in case of urgency, three-fourths of the house in which it shall be pending shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived or amended, unless the new act contain the entire act revived, or the section or sections amended; and the section or sections so amended, shall be repealed."

Swan, J., delivering the opinion in *Pim* v. *Nicholson*, 6 O. S. 176, said: "This court held, in the case of *Miller and Gibson* v. *The State*, 3 O. S. 475, that the provisions of the above section, relating to the distinctness required in reading a bill, and the number of times a bill shall be read, were, as they in fact import, intended as permanent *rules* for the proceedings of the houses. They are directory only, and are to be enforced by the houses, and not by judicial interposition. The further provision, in the same section, that no *bill* shall contain more than one subject, which shall be clearly expressed in its title, is also made a permanent rule in the introduction and passage of bills through the houses. The subject of the bill is required to be clearly expressed in the title, for the purpose of advising members of its subject, when voting in cases in which the reading has been dispensed with by a two-thirds vote. The provision that a bill shall contain but one subject, was to prevent combinations, by which various and distinct matters of legislation should gain a support which they could not if presented separately. As a rule of proceeding in the General Assembly, it is manifestly an important one. But if it was intended to effect any practical object for the benefit of the people in the examination, construction, or operation of acts passed and published, we are unable to perceive it." * * * * * "We are, therefore, of the opinion, that in general the only safeguard against the violation of these rules of the houses, is their regard for, and their oath to support, the constitution of the state. We say, in general, the only safeguard: for whether a manifestly gross and fraudulent violation of these rules might authorize the court to pronounce a law unconstitutional, it is unnecessary to determine. It is to be presumed that no such case will ever occur." And see as to the other clauses of that constitutional provision, *Lehman* v. *McBride*, 15 O. S. 573; *Robinson* v. *Gano*, 4 Weekly Law Gazette, 337.

Section 88 of the City Charter, which provided "that no by-law or ordinance shall contain more than one subject, which shall be clearly expressed in its title," was directory. *Barton* v. *Huntington*, Superior Court of Cincinnati, General Term, 1869, MS.

An ordinance may be valid in part and void in part. *Ib.*

All by-laws, resolutions and ordinances, shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signature of the presiding officer and clerk of the council, and all ordinances shall be published in some newspaper of general circulation in the corporation; if a daily, six times, and if a weekly, twice, before going into operation.[1]

SEC. 101. *Statement as to publication.* The clerk shall, immediately after the expiration of the period of such publication, enter, on the record book of ordinances, in a blank space to be left for such purpose under the recorded ordinance, a certificate stating in what newspaper and of what dates such publication was made, and sign his name thereto officially, and such certificate shall be prima facie evidence that legal publication of such ordinance has been made.[2]

SEC. 102. *Mode of publication.* In all corporations in which there is no newspaper published, publication may be made by posting up written copies of all ordinances at not less than five of the most public places in the corporation, for a period of not less than fifteen days prior to the taking effect thereof; and the clerk shall make a certificate of such posting and the times when, and the places where, in the same manner as provided in the preceding section, and such certificate shall be prima facie evidence that such copies were posted up as required.[1]

SEC. 103. *Effect of non-publication.* It shall be deemed a sufficient defense to any suit or prosecution under any ordinance, to show that no such publication or posting as herein required, was made.[1]

SEC. 104. *By-laws, ordinances, etc., as evidence.* The printed copies of the by-laws or ordinances of any corporation, published under its authority, and transcripts of any by-laws or ordinances, or of any act or proceeding of any municipal corporation, recorded in any book, or entered on any minutes or journal, kept under the direction of such corporation, and certified by its clerk, shall be received in evidence for any purpose for which the original books, ordinances, minutes or journal, would be received, and with as much effect.[3]

CHAPTER XI.

ORDINANCES—HOW ENFORCED.

SECTION.
105. How ordinances, etc., enforced.
106. Amount of fines, etc.
107. Imprisonment.
108. How fines, etc., recovered.
109. Suits must be commenced within one year.
110. Party to be committed in default of payment.
111. Imprisonment, where to be made.
112. Imprisonment in county jail may be prohibited.
113. Limit of such prohibition.

SEC. 105. *How ordinances, etc., enforced.* By-laws and ordinances

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[1] Act of 1852, § 102, as amended April 18, 1862; 59 O. L. 55.

An assessment of taxes made pursuant to an ordinance passed by a city council, is not rendered invalid by the omission of the presiding officer of the council to sign the ordinance. *Blanchard* v. *Bissell*, 11 O. S. 96.

[2] Original.

[3] Act of 1852, § 39.

of municipal corporations may be enforced by the imposition of fines, forfeitures and penalties, on any person or persons offending against or violating such by-laws or ordinances, or any of them; and the fine, penalty or forfeiture, may be prescribed in each particular by-law or ordinance, or by a general by-law or ordinance, made for that purpose: and municipal corporations shall have power to provide, in like manner, for the prosecution, recovery and collection of such fines, penalties or forfeitures.[1]

Sec. 106. *Amount of fines, etc.* Fines, penalties and forfeitures which shall not exceed the sum of fifty dollars for any one specified offense, or violation of the by-law or ordinance, or double that sum for each repetition of such offense or violation, or which shall not exceed ten dollars for each day where the thing prohibited or rendered unlawful is in its nature continuous in respect to time, shall be deemed reasonable; but where in any by-law or ordinance a greater fine, penalty or forfeiture, is imposed than as above specified, it shall be lawful

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[1] Act of 1852, § 35.

Where a charter gave a town council power "to impose reasonable fines on all persons offending against the laws and ordinances aforesaid, and to cause all such fines and all such forfeitures and penalties as may be incurred, under the laws and ordinances of the corporation, to be assessed, levied and collected, in such manner as they may prescribe;" and an ordinance provided, that no person should keep in any house within the corporation, at any one time, more than twenty-eight pounds of gunpowder, under penalty of twenty dollars for every hundred weight, and forfeiture to the corporation, and made it the duty of the marshal to seize the gunpowder and convey it without the city and sell it for the benefit of the corporation: *Held*—1. That the town council had the power to pass an ordinance to prevent large quantities of gunpowder from being kept in the city, and that for offending against such ordinance they might impose fines, and with equal propriety, they might provide for its removal to a safe place without the limits of the corporation; but they had not the power to declare it forfeited, nor the right when it was removed to withhold it from the owner. 2. That no man ought to be deprived of his property by forfeiture without having a legal investigation; and an ordinance of a corporation which violates this principle is not consistent with the spirit of the laws of the United States or of this state. *Cotter* v. *Doty*, 5 O. 393.

A charter gave the city council "power to impose fines, forfeitures, and penalties on all persons offending against the laws and ordinances of said city, and provide for the prosecution, recovery, and collection thereof," and power to prohibit hogs from running at large in the streets. And an ordinance declared it unlawful for hogs to be let loose and run at large in the streets, and made it the duty of the marshal to impound such hogs and sell them to the highest bidder, and pay the proceeds into the city treasury. *Held*—1. That the power given by the charter of the city to impose a forfeiture does not confer the right to seize and sell without any previous proceedings. 2. That an ordinance of the city council sequestering the property of an individual without notice, is invalid. *Rosebaugh* v. *Saffin*, 10 O. 31.

Motion to reconsider the vote by which a resolution was passed, pending which a motion to adjourn prevails: the motion to reconsider suspends the operation of the vote, and that motion may be disposed of at a special meeting of council. An acceptance of the resolution in the meantime by a party interested therein is a nullity. *Cincinnati* v. *City Passenger R. Co.*, Superior Court, Cin., 1868. MS.

for the court or magistrate, in any suit or prosecution for the recovery thereof, to reduce the same to such amount as shall be deemed reasonable and proper, and to permit a recovery or render judgment accordingly.[1]

SEC. 107. *Imprisonment.* In addition to the fines and penalties above specified, the council may provide for a further penalty of imprisonment for any term not exceeding thirty days, and for keeping persons convicted at hard labor during their term of imprisonment, at such time and place, and in such manner as may be prescribed by ordinance.[1]

SEC. 108. *How fines, etc., recovered.* Fines, penalties and forfeitures may, in all cases, and in addition to any other mode provided, be recovered by suit or action before any justice of the peace or other court of competent jurisdiction, in the name of the proper municipal corporation, and for its use; and in any suit or action where pleading is necessary, it shall be sufficient if the petition set forth generally the amount claimed to be due in respect of the violation of the by-law or ordinance, referring to its title, and the date of its adoption or passage, and showing, as near as may be, the true time of the alleged violation.[2]

SEC. 109. *Suits must be commenced within one year.* All suits or prosecutions for the recovery of fines, penalties or forfeitures, or for the commission of any offense made punishable by any by-law or ordinance of any municipal corporation, shall be commenced within one year after the violation of the ordinance, or commission of the offense, and not afterward.[3]

SEC. 110. *Party to be committed in default of payment.* When any fine shall be imposed for the violation of any ordinance of the corporation, and the same is not paid, the party convicted shall, by order of the mayor or other proper authority, or on process issued for the purpose, be committed until such fine and the costs of prosecution shall be paid, or the party discharged by due process of law.[4]

SEC. 111. *Imprisonment, where to be made.* When any person shall be imprisoned under the provisions of this act, such imprisonment shall be in the jail of the corporation, if the corporation be provided with a jail; and any corporation not provided with a jail, shall be allowed, for the purpose of imprisonment, the use of the jail of the county, at the expense of the corporation, until such corporation shall have provided a prison, house of correction, or work-house; and all persons so imprisoned in the county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in such manner as shall be prescribed by the ordinances of the corporation, until discharged by due course of law.[4]

SEC. 112. *Imprisonment in county jail may be prohibited.* The county commissioners may, at their discretion, on giving to the coun-

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[1] Act of 1852, § 36, as amended April 5, 1856; 4 Curwen, ch. 1577.

[2] Act of 1852, § 37. [3] Act of 1852, § 38.

[4] Act of February 28, 1859 (4 Curwen, ch. 1929); Act of 1852, § 55.

Under a former charter of Cincinnati, (32 O. L. L. 245,) a fine assessed by the mayor for the violation of an ordinance, could be collected either by commitment of the person on whom the fine was imposed, or by execution against the chattels. *Huddleson* v. *Ruffin*, 6 O. S. 604.

cil of any corporation written notice of their intention so to do, at least ninety days prior thereto, prohibit the use of the county jail for the purpose authorized in this chapter.[1]

SEC. 113. *Limit of such prohibition.* If, within ninety days after such notice shall have been given, the council of such corporation shall have efficiently provided, by the passage of appropriate ordinances, and the making of the necessary contracts, for the immediate erection of a prison, work-house, or house of correction, for the purpose of imprisonment authorized by this act, the said corporation shall continue, notwithstanding the notice and prohibition provided for in the preceding section, to have the use of the county jail, for the purpose of imprisonment, until such prison, work-house, or house of correction, shall be erected and ready for use.[1]

CHAPTER XII.

POWERS AND DUTIES OF MUNICIPAL OFFICERS.

SECTION.
114. *Mayor*—his jurisdiction, powers, etc.
115. Duties, fees, office, etc.
116. Further duties.
117. Jurisdiction.
118. Duties in suppression of disorder, etc.
119. Supervision of conduct of officers.
120. Supervision of prisons, etc.
121. Suspension of officers for neglect, etc.
122. Shall report to council annually.
123. Disposition of fines, etc.
124. Mayor as police judge.
125. Appeal from decisions of mayor.
126. Bond, salary, etc., of mayor.
127. Vacancy, how filled.
128. *Clerk*—his duties, etc.
129. He shall make a record, etc.
130. And post or publish it.
131. Shall report to state auditor, etc.
132. Shall certify to court.
133. Clerk of court shall record, etc.
134. Penalty for neglect.
135. When clerk shall perform duties of auditor.
136. Shall deliver books, etc., to city auditor.
137. Corporation seal.
138. *Auditor*—his powers and duties.
139. The same.

SECTION.
140. *Marshal*—his deputies.
141. His duties, etc.
142. The same.
143. Powers, responsibility, fees, etc.
144. Disposition of fines, etc.
145. *Chief of Police.*
146. Duties of Chief of Police.
147. Powers, etc., same as marshal.
148. Compensation.
149. Shall receive no perquisites.
150. Disposition of fines, etc.
151. *Treasurer*—his powers and duties.
152. Further duties.
153. The same.
154. Compensation.
155. Duty of county treasurer.
156. Ex-officio corporation treasurer.
157. *Solicitor*—his duties.
158. The same.
159. The same.
160. When tax-payer may institute suit.
161. Duty of the court.
162. Solicitor's report.
163. His salary.
164. *Street Commissioner, Civil Engineer, and Superintendent of Police*—their duties.
165. Their compensation.

I.—The Mayor.

SEC. 114. *Jurisdiction, powers, etc., of mayor.* The mayor shall be a conservator of the peace throughout the corporation; and within the limits of the same shall have all the jurisdiction and powers of a justice of the peace, in all matters, civil and criminal, arising under the laws of the state, and for crimes and offenses his jurisdiction shall be coextensive with the county.[2]

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[1] See note 4, ante, p. 36.

[2] Act of 1852, § 51, as amended March 24, 1860 (4 Curwen, 2117); § 57, as amended March 11, 1853 (3 Curwen, ch. 1248); § 68, as amended April 5, 1856 (4 Curwen, ch. 1577).

The charter of a city authorized its council to levy and collect a special

SEC. 115. *Duties, fees, office, etc.* The mayor shall keep a docket, and shall be entitled to receive the same fees that are or may be allowed justices of the peace for similar services; and he shall keep an office at some convenient place, to be provided by the council, in the corporation, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, "mayor of the city of ———," or "mayor of the incorporated village of ———," as the case may be.[1]

SEC. 116. *Further duties.* The mayor shall perform all the duties by the by-laws and ordinances of the council prescribed; and it shall be his special duty to see that all ordinances, by-laws and resolutions of the council are faithfully obeyed and enforced; and he shall sign all commissions, licenses and permits granted by authority of the council or authorized by this act, and such other instruments as by law or ordinance may require his certificate.[1]

SEC. 117. *Jurisdiction.* The mayor shall have exclusive jurisdiction of all prosecutions for violations of ordinances of the corporation, with full power to hear and determine the same, in all corporations where no police court has been or shall be established. His jurisdiction shall extend to cases where the defendant is entitled to a trial by

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tax for the costs and expenses of improving any streets, by an equal assessment of the feet front bounding on the street, the mode of collecting to be prescribed by an ordinance of the city council. *Held:* That an ordinance, which in substance provided, that on failure to pay the tax when due, the collector should report the delinquent to the mayor, and, thereupon, the mayor should issue a summons, as in an action of debt, to be served and returned as in other cases, and if it should appear to the mayor that such tax had not been paid, he should enter judgment therefor, against such delinquent owner, with interest and costs, and issue execution as in other cases, did not violate the city charter, or the general law of the land. *Cincinnati* v. *Gwynne*, 10 O. 192; *Cincinnati* v. *Bank U. S.*, 14 O. 605.

The municipal act of 1852, which conferred on mayors of cities of the second class "all the jurisdiction and powers of a justice of the peace in all matters civil or criminal," was not in contravention of the constitution of this state, provided the same was passed by a vote of two-thirds of all the members elected to each house of the General Assembly. And in the absence of all showing in the record to the contrary, said act will, on error, be presumed to have been passed by such vote. *Steamboat N. Ind.* v. *Milliken*, 7 O. S. 383.

"We find no difficulty, however," said Brinkerhoff, J., "in holding that mayors of cities are within the number of such 'other courts, inferior to the supreme court, in one or more counties, as the General Assembly may from time to time establish.' (Const., Art. IV., § 15.) They are courts established by the General Assembly by virtue of the fifty-first section of the 'act to provide for the organization of cities.'"

"It is true, however, as contended by counsel for plaintiff in error, that in order to the validity of those portions of the act referred to, which establish and confer judicial powers on the mayors of cities, the act must have been passed by the concurring vote of two-thirds of all the members elected to each house of the General Assembly." *Ib.*

Whether the journal may be resorted to for the purpose of determining that matter, see *State* v. *Moffitt*, 5 O. 358–363; *State* v. *Mc Collister*, 11 O. 46–55; *Miller* v. *State*, 3 O. S. 475.

[1] See note 2, ante, p. 37.

jury, if a jury be not demanded, and he shall perform such other duties compatible with the nature of his office as the council may, from time to time, require.[1]

SEC. 118. *Duties in suppression of disorder, etc.* The mayor shall have and exercise within the corporation limits, all the powers conferred upon sheriffs of the counties, to suppress disorder and keep the peace; and shall award and issue all such writs or process as may be necessary to enforce the administration of justice throughout the corporation, and for the lawful exercise of his jurisdiction according to the usages and principles of law; and to writs, process, transcripts and official papers, of whatsoever kind, he shall subscribe his name and affix his seal of office.[1]

SEC. 119. *Supervision of conduct of officers, etc.* The mayor shall supervise the conduct of all the officers of the corporation, inquire into and examine the grounds of all reasonable complaints against any of them, and cause all their violations or neglect of duty to be promptly punished or reported to the proper authority for correction.[1]

SEC. 120. *Supervision of prison, etc.* The mayor shall also have power, and in his absence, the president of the council, to grant to the magistrates of adjoining or contiguous townships the temporary use of the corporation prison, station or watch houses, to confine criminals or other persons dangerous to the peace of the community, until they can safely be removed therefrom to the county jail, or other place of security.[1]

SEC. 121. *Suspension of officers for neglect, etc.* The mayor shall have power to suspend from office any lieutenants of police, or any officer appointed by him under the authority of any law or ordinance, for neglect of duty, misconduct in office, or other sufficient cause; and may appoint other persons to fill the temporary vacancy occasioned thereby; and all such suspensions, and the cause thereof, and all such appointments, shall be by him reported to the council for their action at the next regular meeting thereafter.[2]

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[1] Act of April 10, 1861, § 2 (58 O. L. 77); Act of March 31, 1864, § 2 (61 O. L. 130.)

[2] Act of 1852, § 71, as amended April 18, 1854; 4 Curwen, ch. 1451.

In an action instituted to recover four months' salary alleged to be due plaintiff as superintendent of the city prison, it appeared that he was removed from office by the mayor, and by the interposition of the mayor and chief of police, excluded therefrom, although ready and willing to perform its duties—two questions were presented: first, as to the right of the mayor to remove; and, secondly, as to the right of the plaintiff to recover the salary, although unlawfully excluded from office, while he was engaged in other employment, and the duties of the office were performed by others. *Held*—1. That the mayor had no right to remove, because not granted by legislative enactment. 2. That the power to appoint did not imply the power to remove. 3. That the power to make, negatives the idea of unmaking and destroying what has been made under it, and does not affirm or imply it.

"The salary of an office," said Hoadly, J., "is attached to the title to

SEC. 122. *Annual report to council.* The mayor shall, at the first regular meeting of the council in April of each year, and at such other times as he may deem expedient, report to the council concerning the affairs of the corporation, and recommend such measures as to him may seem proper.[1]

SEC. 123. *Disposition of fines, etc.* All fines, penalties and forfeitures which may be collected by the mayor, or which may in any manner come into his hands, and all moneys which may be received by him in his official capacity, other than his fees of office, shall be by him weekly paid over to the treasurer of the corporation; and at the first regular meeting of the council in each and every month, he shall submit a full statement of all such moneys received, and from whom and for what purposes received, and when paid over.[1]

SEC. 124. *Mayor as police judge.* In all cities in which there is a police judge, the mayor shall not, except in cases of urgency or necessity, be required to hear or examine into any criminal charge or case, and any warrants issued by the mayor of such cities shall be made returnable before the judge of the police court; and in the unavoidable absence of the police judge, the mayor shall, if no acting police judge be by him appointed, have power to sit in the police court and perform the duties of the judge thereof.[1]

SEC. 125. *Appeal from decisions of mayor.* Appeals may be taken from the decision of the mayor, in the same manner as from decisions of justices of the peace; and any final sentence or conviction before the mayor, may be examined and revised in the same manner and by the same tribunal as is provided for the examination and revision of any final sentence or conviction in the police court.[2]

SEC. 126. *Bond, salary, etc., of mayor.* The mayor shall give bond and security as is required by law of justices of the peace, to be approved by the council; and he shall in addition to the fees he may be entitled to, receive such salary, payable quarterly out of the corporation treasury, as may be provided by ordinance; but the amount of such salary shall neither be increased nor diminished during his term of office.[3]

SEC. 127. *Vacancy, how filled.* In the case of the death, resignation, disability or other vacation of his office, the council may, by the

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the office, and the person entitled thereto has a right to the salary. The acts of officers *de facto*, from the necessity of things, are lawful, but no such necessity exists with reference to the pay. On the contrary, it would be unjust to the individual, as well as contrary to public policy, to deprive an officer illegally excluded from office of the salary which the law requires to be paid him, and make that the reward of usurpation." Judgment for the plaintiff. *Homer* v. *Cincinnati*, Superior Court of Cincinnati, General Term, 1864, MS.

But where the office is abolished, all right to the salary ceases. *State* v. *Wright*, 7 O. S. 333.

[1] See note 2, ante, p. 39.

[2] Act of 1852, § 51; § 86. *Infra*, § 179.

[3] Act of 1852, § 57, as amended March 11, 1853 (3 Curwen, ch. 1248); Act of April 19, 1861 (58 O. L. 92); *Hatch* v. *Cincinnati*, 17 O. S. 48.

vote of a majority of all the members elected, appoint some suitable person within the corporation to act as mayor and discharge the duties of such officer until such vacancy be filled or the disability be removed.[1]

II.—The Clerk.

SEC. 128. *Duties of clerk, etc.* The clerk shall attend all the meetings of the council and make a fair and accurate record of all its proceedings, and of all rules, by-laws, resolutions and ordinances passed by the council; and the same shall be subject to the inspection of all persons interested. In case of his absence from any meeting, the council shall appoint one of their own number to perform his duties for the time being.[2]

SEC. 129. *He shall make a record, etc.* The clerk shall, on or before the first Monday in March of each year, make and enter in the record book of the corporation, an account of all the receipts and expenditures of the corporation of the preceding year, stating from what sources the money was received, and for what purpose expended.[2]

SEC. 130. *And post or publish it.* He shall cause a copy of such account to be posted up, at the places of holding elections for officers of the corporation, on the morning of the first Monday of April, annually; or the council may, by resolution, authorize him to publish the same in some newspaper published in the corporation, as soon after the first Monday of April as may be practicable.[2]

SEC. 131. *Shall report to state auditor, etc.* He shall, on or before the first Monday in June in each year, report to the auditor of state the aggregate expenses of such corporation for the preceding year, under the following heads: school, police, streets, bridges, fire department, lights, poor, salaries and interest; and also the amount of the general corporation tax for all the preceding objects, and for any others not enumerated, and the special taxes of the corporation for the same period; any corporation clerk who shall neglect to make report as above provided, shall forfeit and pay the sum of one hundred dollars, to be recovered before any court having jurisdiction of the subject matter, in the name and for the use of the corporation.[3]

SEC. 132. *Shall certify to the court.* The clerk shall certify to the court of common pleas of the county in which the corporation is situate, the election of every officer within the corporation having power to discharge the duties of a justice of the peace, or to take the acknowledgment of deeds, or to certify to depositions or affidavits to be used without the limits of such corporation, with the date of such election, and the time when such officer became legally qualified to dis-

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[1] See note 3, ante, p. 40.

[2] Act of 1852, § 48. as amended February 5, 1861 (58 O. L. 6); § 69, as amended April 29, 1862 (59 O. L. 69); § 59.

A party interested is not concluded by such record, if improperly made. but may show the truth by the papers or entries. 7 O. 1 pt. 257; 6 O. 426; 18 O. 331, 469.

[3] Act of April 8, 1856, § 13; 4 Curwen, ch. 1572.

charge the duties of such office; which certificate shall be made within ten days after such qualification.[1]

SEC. 133. *Clerk of court shall record, etc.* It shall be the duty of the clerk of the court of common pleas to record the same in the book in which the record of the elections and qualifications of justices of the peace are kept; and the same fees shall be allowed to the officers certifying and recording the same, as are allowed for certifying and recording the election and qualification of justices of the peace.[1]

SEC. 134. *Penalty for neglect.* Every clerk whose duty it shall be to make such certificate, or to record the same when presented for record, who shall neglect or refuse to perform the duties enjoined by this chapter, shall pay to the treasurer of the corporation, the election of whose officer shall thereby remain uncertified or unrecorded, the sum of fifteen dollars, to be recovered in an action of debt, at the suit of said corporation; and also be liable for all damages arising from such neglect or refusal.[1]

SEC. 135. *When clerk shall perform duties of auditor, etc.* In all corporations in which there is no city auditor, the clerk shall perform the duties of auditor, under the direction of the council, and all such other duties pertaining to his office as shall by the council be prescribed; and he shall have the charge and custody of all the laws and ordinances, and the books, records and papers of the corporation, and shall carefully keep and preserve the same in his office, and shall certify all transcripts that may be required of any record or papers in his office, and shall be entitled to receive therefor the same fees as other officers for similar services.[2]

SEC. 136. *Shall deliver books, etc., to city auditor.* Upon the creation of the office of city auditor, the clerk shall, upon demand, deliver to the incumbent of such office, when duly qualified, all the records, books, papers, vouchers and documents of every description, in his possession, pertaining to the duties of such auditor.[3]

SEC. 137. *Corporation seal.* The council shall cause to be provided for its clerk's office, a seal, in the center of which shall be the name of the corporation, and around the margin the words "City Clerk," or in case of an incorporated village, the words "Corporation Clerk;" which seal shall be affixed to all transcripts, orders, certificates or other papers which it may be necessary or proper to authenticate under the provisions of this act, or of any ordinances of the corporation.[4]

III.—The Auditor.

SEC. 138. *Powers and duties of auditor.* The auditor shall have power to administer oaths, and take affidavits, and such other powers, and shall perform such duties, as may be prescribed by law or any or-

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[1] Act of April 3, 1837; 1 Curwen, ch. 163.

[2] Act of 1852, § 39; § 69, as amended April 29, 1862; 59 O. L. 69.

[3] Original.

[4] Act of 1852, § 60.

dinance of the corporation, not inconsistent with the constitution and laws of the state, and not incompatible with the nature of his office.[1]

SEC. 139. *The same.* He shall have charge of all books, records and papers connected with his office, and shall carefully keep and preserve the same in his office, and the same shall be subject to the inspection of all persons interested.

IV.—The Marshal.

SEC. 140. *The marshal—his deputies.* The marshal shall be the principal ministerial officer of the corporation, and he shall have power to appoint one or more deputies, for whose official acts he shall be responsible, and by whom he may execute all writs, process and orders to him directed.[2]

SEC. 141. *His duties.* He shall execute and return all writs and process to him directed by the mayor, and shall, by himself or deputy, attend on the sittings of said courts to execute the orders and process thereof, and to preserve order therein; and his jurisdiction and that of his deputies, in the execution of all such writs and process, and in criminal cases and in cases of a violation of the ordinances of the corporation, shall be coextensive with the county.[2]

SEC. 142. *The same.* He shall suppress all riots, disturbances and breaches of the peace, and to that end may call upon the citizens to aid him; he shall arrest all disorderly persons in the corporation, and pursue and arrest any person fleeing from justice in any part of the state; he shall arrest any person in the act of committing any offense against the laws of the state or the ordinances of the corporation, and forthwith bring such person before the mayor, or other competent authority, for examination or trial; and he shall receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.[1]

SEC. 143. *Powers, responsibilities, fees, etc.* He shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, and shall receive the same fees as sheriffs and constables in similar cases, for services actually performed by himself or his deputies, and such additional compensation as the council may prescribe; but in no case shall he receive any fees or compensation for services

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[1] Act of April 8, 1856, § 4, as amended March 21, 1861; 58 O. L. 39.

[2] Act of 1852, § 52; § 70; § 73, as amended April 24, 1854; 4 Curwen, ch. 1460. See Code of Criminal Procedure of 1869, §§ 21–29.

An officer clothed with a magistrate's warrant, went out of the state and arrested the accused. *Held:* That in so doing, he violated both public and private right, and that he could maintain no action for his services. *Smith* v. *Portage Co.*, 9 O. 25.

An officer who arrests a thief, by virtue of a magistrate's warrant delivered to him for the purpose, can not maintain an action to recover a reward offered by the injured party for the apprehension of the thief and the recovery of the stolen property. *Gillmore* v. *Lewis*, 12 O. 281; *Rea* v. *Smith*, 2 Handy, 193. See also as to the power to arrest, a full collection of the cases by J. T. Worthington, in *Jones* v. *State*, 20 O. 38.

rendered by any watchman or other officer, nor shall he receive for guarding, safe-keeping or conducting into the mayor's or police court, any person arrested by himself or deputies, or by any other officer, a greater compensation than twenty cents.[1]

Sec. 144. *Disposition of fines, etc.* All fees, costs, fines and penalties by him collected, shall immediately be paid over to the mayor, and he shall report to the council monthly the amount thereof, and from whence and for what purpose collected and when paid over.[1]

V.—Chief of Police.

Sec. 145. *Chief of police.* In all corporations in which there is no marshal, the duties imposed on that officer by this act shall be performed by the chief of police.[2]

Sec. 146. *His duties.* He shall be under the direction of the mayor, and shall execute all process to him directed by the mayor or judge of the police court, and shall, by himself or some lieutenant of the police to be by him designated, attend on the sittings of said courts to execute the orders and process thereof, and preserve order therein.[2]

Sec. 147. *Powers, etc., same as marshal.* He shall have the same powers, perform the same duties, and be subject to the same responsibilities as are imposed on the marshal in the preceding division of this chapter.[2]

Sec. 148. *Compensation.* He shall receive for his compensation from the corporation such sum, payable quarterly, as the council may by ordinance prescribe, not exceeding fifteen hundred dollars per annum, and from the county, in state cases, not exceeding five hundred dollars per annum, to be allowed by the county commissioners.[2]

Sec. 149. *Shall receive no perquisites.* In no case shall he, or the lieutenant or watchman who may be detailed by him to attend on the police court, demand or receive any perquisite, fee or reward other than is authorized by law.[2]

Sec. 150. *Disposition of fines, etc.* All fines, penalties and costs collected by the chief of police, lieutenant or watchman, shall be paid over to the clerk of the police court, and the same fees shall be charged and collected by the chief of police from persons convicted, as the marshal is herein authorized to charge and collect for similar services.[2]

VI.—The Treasurer.

Sec. 151. *Powers and duties of treasurer.* The treasurer, in addition to the ordinary and usual duties of such officer, shall have such powers and perform such duties as are prescribed in this act or may be required by any ordinance of the corporation, not inconsistent with this act and not incompatible with the nature of his office.[3]

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[1] See note 2, ante, p. 43.

[2] Act of 1852, § 74; Act of March 14, 1859, § 5, as amended March 8, 1860; 4 Curwen, ch. 2070.

[3] Act of 1852, § 72; Act of May 13, 1868; 65 O. L. 186.

SEC. 152. *Further duties.* He shall demand and receive from the county treasurer, all taxes levied and assessments made and certified to the county auditor by authority of the council, and by said auditor placed on the tax duplicate for collection, and from all persons authorized to collect or required to pay the same, all moneys accruing to the corporation from judgments, fines, penalties, forfeitures, licenses, and costs taxed in the mayor's and police court, and all debts, of whatever kind, due the corporation, and disburse the same on the order of such person or persons as may be authorized by ordinance to issue orders for the same.[1]

SEC. 153. *The same.* The treasurer shall settle and account with the council quarterly, and as much oftener as the council shall by resolution or ordinance require; and he shall report annually to the council, at the first regular meeting thereof, in April, the condition of the finances of the corporation and the amount received by him and the sources whence received, and the disbursements by him made and on what account, during the year preceding the first day of April, and such account shall exhibit the balance due on each particular fund which may have come into his hands during the year.

SEC. 154. *Compensation.* The treasurer shall be allowed, as compensation for the disbursement of all moneys, other than school funds, which shall come into his hands under the provisions of this act, such sum as the council may allow, not exceeding the following in any one year:

On the first five thousand dollars, two per centum.

On the next five thousand dollars, one and a half per centum.

On the next ten thousand dollars, one-half of one per centum.

And on all sums that may be disbursed by him in excess of the above amounts, one-fifth of one per centum, payable out of any money in the corporation treasury not otherwise appropriated, and no other compensation shall be allowed corporation treasurers for services performed under this act.[2]

SEC. 155. *Duty of county treasurer.* The county treasurer shall, on the first Monday of February and August in each year, pay over to the treasurer of the corporation all moneys received by him up to said dates, arising from taxes levied and assessments made belonging to the corporation.[3]

SEC. 156. *The same as ex-officio corporation treasurer.* In all corporations in which the county treasurer is by law made ex-officio the corporation treasurer, such county treasurer, if he has already entered upon the duties of his office, shall continue to act as such corporation treasurer until the expiration of his term of office; all moneys in the hands of such county treasurer acting ex-officio as corporation treasurer, shall, upon the termination of his office, be transferred to the corporation treasurer.[1]

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[1] Act of March 14, 1867; 64 O. L. 52.

[2] Act of May 13, 1868 (65 O. L. 186); April 29, 1862 (59 O. L. 69.)

[3] Act of 1852, § 93.

VII.—The solicitor.[1]

Sec. 157. *Duties of solicitor.* The solicitor shall, whenever required so to do by resolution of the council, prosecute for and in behalf of the corporation all complaints, suits and controversies in which the corporation is a party, except cases before the police court where there is a prosecuting attorney for such court, and such other suits, matters and controversies as shall, by resolution or ordinance, be directed.

Sec. 158. *The same.* He shall pay over to the treasurer all moneys which may come into his hands belonging to the corporation, or which may come into his hands by way of fines, forfeitures, costs or otherwise, and take the treasurer's duplicate receipts therefor, one of which he shall file with the clerk of the corporation, or in case there be an auditor, then with such auditor.

Sec. 159. *The same.* He shall apply to a court of competent jurisdiction for an order or injunction to restrain the misapplication of the funds of the corporation, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the corporation in contravention of the laws or ordinances governing the same, or which was procured by fraud or corruption.

Sec. 160. *When tax-payer may institute suit.* In case the solicitor shall fail, upon the request of any of the tax-payers thereof, to make the application provided for in the preceding section, it shall be lawful for such tax-payer to institute a suit in his own name on behalf of the corporation.[1]

Sec. 161. *Duty of the court.* If the court hearing such case shall be satisfied that such tax-payer had good cause to believe that his allegations were well founded, or if the same are sufficient in law, it shall make such order as the equity and justice of the case shall demand; and in such case he shall be allowed his costs, including a reasonable compensation to his attorney.

Sec. 162. *Solicitor's report.* The solicitor shall make a report annually to the council at their first regular meeting in April, of the business of his office and the moneys by him collected during the year preceding the first day of April, and such other matters as he may think proper in order to promote the good government and welfare of the corporation.

Sec. 163. *His salary.* He shall receive such stated salary, payable quarterly out the corporation treasury, and such fees or compensation for particular services, as the council may prescribe.

VIII.—Street commissioner, fire engineer, civil engineer and superintendent of markets.[2]

Sec. 164. *Duties of street commissioner, civil engineer and super-*

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[1] Act of March 5, 1860, § 13; 4 Curwen, ch. 2068; Act of 1852, § 61, as amended April 29, 1854.

[2] Act of 1852, § 72; Act of April 8, 1856, § 7, as amended April 3, 1863; 60 O. L. 51.

intendent of market. The street commissioner, fire engineer, civil engineer, and superintendent of markets, shall each severally perform the duties prescribed by this act, and such other duties not incompatible with the nature of their office, as the council may by ordinance require.

SEC. 165. *Their compensation.* They shall each receive such compensation for their services, by fees or salary, or both, as may be provided by ordinance.

CHAPTER XIII.

JURISDICTION AND POWERS OF POLICE COURTS.

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166. *Police Judge*—his powers.
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I.—Police Judge.

SEC. 166. *Powers of police judge.* The police judge shall have in all criminal cases the same power and jurisdiction that are or may be by law vested in justices of the peace of the county; he shall also have power to take acknowledgments of deeds and other instruments of writing; to administer oaths, and take and certify depositions.[1]

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[1] Act of 1852, § 83, as amended April 29, 1862; 59 O. L. 70.

The 83d section of the municipal corporation act of 1852 conferred upon the police court of cities of the first class jurisdiction to try and determine a charge of obtaining money or goods by false pretenses. *Dillingham* v. *State*, 5 O. S. 280.

Such charge might be preferred by information filed in that court, and by the prosecuting attorney thereof. *Ib.*

The constitutional right of trial by jury is not infringed when the option is given to the accused to have the issue tried by the court or the jury, and he submits the cause to the court. *Ib.*

As to the class of offenses that may be prosecuted in the police court, the remarks of the judge, in delivering the opinion in that case, are important. Ranney, J., said: "By the 10th section of the 1st article of the Constitution, a presentment or indictment of a grand jury is dispensed with 'in cases of petit larceny and other inferior offenses.' How such offenses should thereafter be prosecuted, depended entirely upon legislative discretion. But, it is said, this dispensation only extends to offenses inferior in grade to petit larceny. We can not adopt such a construction. Indeed, to do so, would be to leave the whole matter to mere conjecture. It is very evident that petit larceny is simply named as one of a class of offenses; and equally so, that the class was intended to embrace all of-

SEC. 167. *His jurisdiction.* He shall have jurisdiction of all violations of the ordinances of the city, and of all cases of petit larceny and of inferior offenses which do not require an indictment by a grand jury, committed within the limits of the city or within four miles thereof. The power to hear and determine such offenses shall extend to cases where the accused is entitled to a trial by jury, if a jury be waived.[1]

SEC. 168. *The police court.* He shall have power to hold a court, to be styled "The Police Court," which shall be a court of record; it shall have a seal to be provided by the city council, with the name of the state in the center, and the style of the court around the margin. He shall have power to issue process, to preserve order and punish contempts; to summon and empannel jurors, and such further powers incident to a court of common pleas, as may be necessary for the exercise of the jurisdiction herein conferred.[1]

SEC. 169. *Prosecutions, how brought.* Prosecutions in said court for offenses against the laws of the state, shall be brought and conducted in the name of the state, and prosecutions for the violation of city ordinances shall be brought and conducted in the name of the city.[1]

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fenses for which a punishment less than imprisonment in the penitentiary is provided. This was a classification so long used in our laws, and so well understood, as to leave no doubt that it was the one intended to be adopted by the convention." *Ib.*

Whether the police court has the power to naturalize aliens does not seem to have been determined. It has, by the provisions of this act, three of the four requisites specified in the act of Congress; that is, it is a court of record, and has a seal and clerk. The only question is whether it has common law jurisdiction, within the meaning of the act of 1802. 2 Stats. at Large, 153 The argument in favor of the jurisdiction is substantially this: 1. The police court has power to fine and imprison for contempts. 2. Although we have not in Ohio any common law offenses, yet the crime of larceny and others within the final jurisdiction of the police court are substantially the same as at common law, and a jury of twelve men is guaranteed by the constitution. 3. The requisite of the act of Congress is not that the tribunal shall be a common law court in any general sense, but any court of record having jurisdiction, however limited, of a common law origin, and a seal and clerk, has the power to admit aliens to citizenship.

The meaning of the phrase "common law jurisdiction," in that provision, was discussed at some length in cases wherein the jurisdiction of the Ohio probate courts, over the subject, was considered. The question of the power of those courts in that respect has not been finally determined. In *Ex parte* Smith, 3 Law Gaz. 237, U. S. Circuit Court, S nthern District of Ohio, McLean, J., presiding, and *Ex parte* Wingard, 1 West. L. Monthly, 453, S. C. 4 Law Gaz. 169, the cases on the subject (8 Met. 168; 15 B. Monroe, 722; 18 *Ib.* 693; 30 Barb. 588; Brightley's Dig. U. S. S. C. Reps., Tit. Alien) were to some extent examined, and the conclusion was reached that our probate courts possess such jurisdiction. But the District Court of Hamilton county (2 Law Gaz. 318) and Mr. Attorney General McCook (MS.) were of a different opinion.

[1] See note 3, ante, p. 47.

That offenses against municipal corporations are regarded as quasi criminal, and may be prosecuted in the name of the corporation, see *Markle* v. *Akron*, 14 O. 586.

SEC. 170. *Compensation of police judge.* The judge of the police court shall receive no fees or perquisites whatever, but shall receive such annual compensation, to be paid quarterly out of the city treasury, not exceeding two thousand dollars, as the council may prescribe, and such further compensation payable out of the county treasury, as the county commissioners may deem proper; but in cities of the first class, having a population of one hundred thousand inhabitants, such judge shall receive not less than fifteen hundred dollars per annum from the city treasury, and not less than fifteen hundred dollars per annum from the county treasury; nothing in this section shall prohibit said judge from receiving the fees for taking acknowledgment of deeds, depositions and affidavits, allowed to justices of the peace for like services.[1]

SEC. 171. *Police court always open, etc.* The police court shall always be open for business; but may adjourn from day to day or from time to time; and the mode in which business shall be brought before the court shall be fixed by ordinance of the city council or rule of the court.[2]

SEC. 172. *Jurors in police court, etc.* The jurors in said court shall have the qualifications of jurors in the court of common pleas, and shall be summoned and empanneled in accordance with an ordinance of the city council, or in case the council shall fail to pass such ordinances, in accordance with a rule of court, and said court shall have power to compel the attendance of witnesses, jurors and parties.[3]

SEC. 173. *Rules of practice, etc.* The judge shall adopt such rules of practice and procedure as will give all parties a proper statement of any charge against them, and a full opportunity of being heard; but shall at the same time dispatch the business with all convenient speed; and all rules of the court shall be written or printed, and posted in the room in which it holds its sittings.[2]

SEC. 174. *Substitute for police judge.* In the absence, inability or disability of the judge, it shall be lawful for the mayor to select a reputable member of the bar, residing within the city, to hold said court, and for the time being such person shall have the jurisdiction and powers conferred upon judges of police courts, and shall be styled, "acting police judge," in which style he shall sign all process and records during the time he shall serve, and shall perform all other official acts pertaining to said office.[4]

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[1] Act of 1852, § 84, as amended April 10, 1867; 64 O. L. 121.

[2] Act of April 28, 1854, § 25, as amended April 16, 1867; 64 O. L. 214.

[3] Act of 1852, § 82, as amended April 28, 1854.

[4] Act of February 21, 1862, as amended April 17, 1867; 64 O. L. 251.

In *Nesmith* v. *State*, Hamilton County Common Pleas (July, 1869), Cox, J., in giving a construction to the corresponding provision of the former law, held that the judgment of such "acting police judge" was void, his appointment being in violation of the constitution, Art. IV., § 10, that all judges, other than those expressly provided for in the constitution, must be elected by the electors of the judicial district for which they may be

Sec. 175. *His oath.* Before the person so appointed shall enter upon the duties of acting judge, he shall take an oath to support the constitution of the United States, the constitution and laws of the state of Ohio, the charter and ordinances of the city, and an oath of office.[1]

Sec. 176. *Record of proceedings.* In cases where the police court is required to recognize the defendant to appear before any other court, the proceedings and recognizance shall be recorded as is required of justices of the peace in like cases.[2]

Sec. 177. *Fees.* The fees in said police court shall be the same in state cases as are or may be allowed by law to justices of the peace, or in the probate court in like cases; and in cases for the violation of ordinances, such fees not exceeding fees for services of a like nature in state prosecutions, as the council shall by ordinance prescribe.[2]

Sec. 178. *Fees of witnesses.* Witnesses in the police court shall be allowed the same fees in cases arising from a violation of the ordinances, as are allowed in like cases before justices of the peace, which shall be paid in the same manner; and in state cases the same fees, which shall he paid in the same manner as in like cases in the court of common pleas.[2]

Sec. 179. *Writ of error to common pleas.* Any final conviction or sentence of the police court, may be examined into by the court of common pleas on writ of error, which may be allowed by such court or judge thereof for sufficient cause, and proceedings may be stayed as may be deemed reasonable.[3]

Sec. 180. *Return on such writ.* The police court shall return on such writ of error all matters of record or on file touching the proceedings, or a transcript thereof, and any facts which may have been noted by the judge or certified in the nature of a bill of exceptions at the time of trial.[3]

Sec. 181. *What common pleas court may do.* On such return the court of common pleas may make such order as right and justice may require, and may either discharge the party or set aside the conviction and order another trial, or dismiss the writ of error and order a procedendo; but no conviction or sentence of any police judge shall be set aside or disregarded for the want of any technical averment that any matter or thing is within his jurisdiction.[3]

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created; but that in accordance with the case of the Logan Branch Bank, 1 O. S. 432, it was the duty of the court to dismiss the case for want of jurisdiction, without reversing the judgment, as the decision of such "acting police judge" was not the judgment of a court. MS.

On the other hand, in the case of *Ohio ex rel.* v. *Weber*, before Judge Storer, of the Superior Court of Cincinnati, on habeas corpus (August, 1869), it was held that the sentence of such "acting police judge" was, in any view, the act and judgment of a judge *de facto*, and therefore binding; but that the statutory provision for such appointment was authorized by the constitution, and hence the officer was a judge *de jure*. MS.

[1] See note 4, ante, p. 49.

[2] Act of April 28, 1854; 4 Curwen, ch. 1460.

[3] Act of 1852, § 86.

II.—Clerk of Police Court.

Sec. 182. *His duties.* The clerk of the police court shall perform like duties as the clerk of the court of common pleas in like cases.[1]

Sec. 183. *His oath and bond.* He shall, before entering upon the duties of his office, take an oath of office, and execute bonds, with sufficient surety, to the city and county commissioners of the county in which said court is situated, in such sums as the council of said city and the county commissioners of said county may prescribe, conditioned for the faithful performance of the duties of his office.[1]

Sec. 184. *His salary, etc.* He shall receive for his services in city cases, a fixed salary, to be prescribed by ordinance of the council, and for state cases prosecuted in said court, such further allowance, not exceeding eight hundred dollars per annum, as the county commissioners of such county may deem proper.[1]

Sec. 185. *His powers.* He shall have power to administer oaths, and to appoint two or more deputies, to be approved by the council, who shall receive such reasonable compensation, not exceeding fifteen hundred dollars per annum, as the council shall prescribe.[1]

Sec. 186. *Substitute for clerk.* In case of temporary inability of the clerk, when no deputy shall have been appointed, the judge may appoint some competent person, who, upon giving bond and taking the oath prescribed, shall perform all the duties, and have all the powers imposed upon said clerk; and he shall be paid out of the city treasury, on the order of the council, at the same rate as the clerk is paid for similar services; but such appointment shall be valid only until the inability of the clerk is removed.[1]

Sec. 187. *Further duties of clerk.* The clerk shall file and preserve all informations, process, motions and papers of every description, used in said court, and keep a journal of all the doings of the court, which shall be read each day, and, if necessary, corrected and signed by the judge; and in all cases where final judgment is given, the journal entry of each case, with the papers filed, shall be deemed the record of that case.[2]

Sec. 188. *Shall not be concerned as counsel.* He shall not be concerned as counsel or agent in the prosecution or defense of any case before the court.

Sec. 189. *Shall account for fines, etc.* He shall, on the first day of every month, or within three days thereafter, account, under oath, for all fines, penalties, fees and costs, imposed by the court in city cases, to the city auditor, and in state cases, to the county auditor, and shall pay into the city and county treasuries, respectively, the amount then received by him.[2]

Sec. 190. *Disposition of surplus fees.* If there be any surplus of such fees, collected for the city after payment of the expenses of the

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[1] Act of April 28, 1854, § 25, as amended April 16, 1867; 64 O. L. 214.

[2] Act of April 28, 1854; 4 Curwen, ch. 1460.

police court required to be paid by such city, such surplus shall be appropriated by the council for the benefit of the common schools of the city.[1]

III.—Prosecuting Attorney of Police Court.

SEC. 191. *His duties.* It shall be the duty of the prosecuting attorney of the police court to prosecute all city and state cases brought before said court, and he shall perform like duties, as far as the same are applicable to such police courts, as are required by prosecuting attorneys of the state.[1]

SEC. 192. *His salary.* He shall receive for his services in city cases such salary, to be paid out of the city treasury, as the council shall prescribe, and the county commissioners of any county in which there is or may be a police court established, shall allow him such further compensation, not to exceed eight hundred dollars per annum, as may be deemed right and proper, which shall be paid out of the county treasury.[1]

SEC. 193. *Substitute for prosecuting attorney.* In case of the temporary inability of the prosecuting attorney of the police court, the judge shall appoint some competent member of the bar to perform the duties of the office, until such disability is removed, and no longer, and he shall be paid out of the city and county treasuries a compensation proportionate to the time he may serve, and the amount so paid may, at the discretion of the judge, be deducted from the salary of the prosecuting attorney.[2]

CHAPTER XIV.

THE MAYOR'S COURT.[3]

SECTION.
194. Juries in mayor's court.
195. Talesmen.
196. Duties and compensation of jurors.
197. Costs and fees.
198. Powers of mayors same as justices.

SEC. 194. *Juries in mayor's court.* The council of any city or incorporated village, shall have power to provide, by ordinance, for the summoning and empanneling of juries by the mayor; such jurors shall have the qualifications of jurors in the court of common pleas, and may be empanneled to try such cases arising from violations of ordinances as may be prescribed by the council.[4]

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[1] See note 2, ante, p. 51. [2] Original.

[3] Act of 1852, § 68, as amended March 24, 1860 (4 Curwen, ch. 2117); Act of April 10, 1861 (58 O. L. 77); Act of March 31, 1864 (61 O. L. 130.)

[4] Good, judicious persons, having the qualifications of electors, have the qualifications of jurors in the court of common pleas. Act of Feb. 9, 1831 (3 Chase, 1705); Act of March 27, 1866 (63 O. L. 53.)

Active members of fire engine, hook and ladder companies, or other companies for the extinguishment of fire or the protection of property at fires, and all clergymen and priests, physicians, and all public officers,

SEC. 195. *Talesman.* When any juror so summoned shall, upon challenge or inquiry, be found incompetent, he may be dismissed, and a talesman called by the marshal or officer attending the mayor's court at the time, and the panel filled in the same manner as panels are filled in the court of common pleas.

SEC. 196. *Duties and compensation of jurors.* Jurors summoned to serve in the mayor's court, shall perform like duties and be subject to like rules and penalties as jurors before justices of the peace; and

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excepting in incorporated villages having less than twelve hundred inhabitants, are exeused from serving as jurors. Act of March 13, 1859; 4 Curwen, ch. 1991.

Any person who shall serve as a juror, grand or petit, or both, in the courts of this state, for three weeks in any year, shall be exempt from further service as a juror during the balance of such year. Act of April 17, 1867; 64 O. L. 254.

No person holding office under the act "authorizing the appointment of metropolitan police commissioners in cities of the first class, with a population of less than one hundred thousand inhabitants at the last federal census," is subject to jury duty. Act of May 1, 1866; 63 O. L. 104.

A juror may be challenged who has been convicted of any crime which, by law, renders him disqualified to serve on a jury; or who has an interest in the cause; or who has an action depending between him and the defendant; or who is the employer, employe, counselor, agent, steward, or attorney of the defendant, or who is subpenaed in the cause as a witness; or who is of kin to the defendant; and the same shall be considered as a principal challenge, and the validity thereof tried by the court. A juror may be challenged on suspicion of prejudice against or partiality for the defendant, or for want of a competent knowledge of the English language, or any other cause that may render him at the time an unsuitable juror; and the validity of such challenge shall be determined by the court, and each party may peremptorily challenge two jurors. Act of Feb. 9, 1831, § 14, as amended February 25, 1859: 4 Curwen, ch. 1923. Any juror in any county where there is a city of the first or second class, or incorporated village having a population of over three thousand, who shall have served once already on a jury as talesman in the trial of any cause in any court of record in the county within the preceding twelve months, may be challenged for such cause. Act of April 13, 1865; 62 O. L. 144. A juror may be challenged who has formed or expressed an opinion as to the guilt or innocence of the accused; or who is a relation within the fifth degree to the person alleged to be injured, or attempted to be injured, by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant; or has served on a jury which was sworn in the same cause against the same defendant, and which jury either rendered a verdict which was set aside or was discharged after hearing the evidence; or that he has served as a juror in a civil case brought against the defendant for the same act. All challenges for cause shall be tried by the court on the oath of the person challenged, or on other evidence. Code of Criminal Procedure, § 134; 66 O. L. 307.

Where a person called as a talesman has already served as a tales-juror at the same term, so far as to have been sworn and heard all the evidence in the case, although the case was then compromised and the jury discharged without a verdict, he is within the causes for challenge enumerated in the act of February 25, 1859, "to amend section fourteen of an act entitled an act relating to juries," etc. *Famulener* v. *Anderson*, 15 O. S. 473.

Witnesses before justices of the peace are entitled to fifty cents per day, and five cents per mile from their place of residence to the place of holding the court. Act of March 16, 1852; 3 Curwen, ch. 1144.

witnesses subpenaed to give testimony in said court, and jurors, shall receive the same compensation as witnesses before justices of the peace. In cases for the violation of ordinances, their fees shall be paid, on the certificate of the mayor, out of the corporation treasury, and in state cases, on like certificate, out of the county treasury.

SEC. 197. *Costs and fees.* The costs of the mayor and marshal, in all cases for the violation of ordinances, shall be fixed by ordinance, but in no case greater than the fees for similar services before justices of the peace; and their fees, including the fees of jurors and witnesses, shall, in case of conviction, be taxed against the party or parties convicted, and in case of acquittal, except the fees of mayor and marshal, against the corporation.

SEC. 198. *Powers of mayors same as justices.* The mayor shall have like power to punish contempts and compel the attendance of jurors and witnesses, and to establish rules for the examination and trial of all cases brought before him, as is or may be conferred upon justices of the peace.

CHAPTER XV.

GENERAL POWERS OF MUNICIPAL CORPORATIONS.[1]

SECTION.
199. General sanitary and other powers of municipal corporations.

SEC. 199. *General sanitary and other powers of municipal corporations.* All cities and incorporated villages shall have the general powers hereinafter mentioned, and may provide by ordinance for the exercise of the same.

1. *As to riots, etc.* To prevent riots, gambling, noise and disturbance, indecent or disorderly conduct or assemblages, preserve peace and good order, and to protect the property of the municipal corporation and its inhabitants.[2]

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[1] Act of 1852, §§ 20, 21, 22, 23, 34; § 25, as amended March 6, 1857; § 26, as amended April 12, 1858; § 24, as amended April 28, 1854; § 62, as amended May 1, 1854; § 63, as amended March 18, 1859; §§ 64, 65; § 82, as amended April 28, 1854; Act of April 6, 1866 (63 O. L. 187); Act of May 1, 1861 (58 O. L. 113); Act of May 13, 1868 (65 O. L. 187); Act of February 19, 1866 (63 O. L. 18); Act of March 28, 1864 (61 O. L. 71); Act of April 6, 1866 (63 O. L. 186); Act of April 11, 1867 (64 O. L. 124); Act of April 8, 1856, § 10; Act of April 12, 1865 (62 O. L. 136); Act of April 5, 1866 (63 O. L. 144); Act of January 26, 1867 (64 O. L. 8); Act of April 12, 1865 (62 O. L. 135); Act of May 8, 1868 (65 O. L. 163); Act of March 29, 1867 (64 O. L. 70); Act of April 5, 1867 (64 O. L. 110); Act of April 12, 1865 (62 O. L. 136.)

[2] The act to incorporate the city of Cleveland, passed in 1836, provided, among other things, in reference to the city council: "It shall be their duty to regulate the police of the city, preserve the peace, prevent disturbances and disorderly assemblages." *Held*, that the duty intended was that properly appertaining to an administrative and legislative body, acting in the government of a city—the making regulations, by-laws and ordinances for the purposes specified, to be enforced by the appointment

2. *As to nuisances.* To prevent injury or annoyance from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated.[1]

3. *As to billiard tables, etc.* To suppress billiard tables, nine or ten pin alleys or tables, and ball alleys; and to authorize the destruction of all instruments or devices used for the purpose of gaming.[2]

4. *As to disorderly houses, etc.* To suppress and restrain disorderly houses, and houses of ill-fame, and provide for the punishment of all lewd and lascivious behavior in the streets and other public places.

5. *As to sale of fermented liquors.* To regulate, restrain and prohibit, ale, beer and porter houses or shops; and houses and places of notorious or habitual resort for tippling or intemperance.[3]

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of officers; and that neither on general principles, nor from the effect of that enactment, is the city of Cleveland responsible for the destruction of property by a riotous assemblage of persons, or for the neglect of the officers in not preserving the peace, and preventing such destruction. *Western Col.* v. *Cleveland*, 12 O. S. 375.

"There is a distinction between those powers delegated to municipal corporations to preserve the peace and protect persons and property, whether to be exercised by legislation or the appointment of proper officers, and those powers and privileges which are to be exercised for the improvement of the territory comprised within the limits of the corporation, and its adaptation to the purposes of residence or business. As to the first, the municipal corporation represents the state—discharging duties incumbent on the state; as to the second, the municipal corporation represents the pecuniary and proprietary interests of individuals. As to the first, responsibility for acts done, or omitted, is governed by the same rule of responsibility which applies to like delegations of power; as to the second, the rules which govern the responsibility of individuals are properly applicable." Gholson, J. *Ib.*, 375–377.

[1] The city council has authority, under the law, to punish nuisances by a fine, and may, with that view, define, in an ordinance, what is to be deemed a nuisance as to the obstruction of a public street; but the city council can not, by any such ordinance, create a civil liability in a case where none exists at law. A liability in this respect must depend on the general legislation of the state. *Chambers* v. *Ohio Life Ins. & Trust Co.*, Disney's R. 327; 2 Weekly Law Gaz. 37.

[2] Keeping nine-pin alleys in a town, by a keeper of a public house, being unlawful, the builder of such alley can not recover the value of labor and material furnished in its construction. *Spurgeon* v. *McElwain*, 6 O. 442.

[3] The liquor law of 1854 "is not prohibitory, nor does it interfere, in any degree, with any right of property. It belongs to that class of legislative acts commonly called "police laws," and is framed with a view to regulate and not to destroy. It seeks to do by constitutional means what the assembly is expressly authorized to do—provide against the evils resulting from the traffic in intoxicating liquors. One of the greatest of these evils is the congregation of idle and dissolute persons at places where liquors are sold and drunk; hence the sale of liquor to be drunk at the place where sold is prohibited. Another evil is the sale to minors and persons intoxicated, or in the habit of getting intoxicated; hence the sale to the former is prohibited, except upon the order of their parents, guardians, or family physicians, and the sale to the latter is prohibited altogether. And inasmuch as the habitual viola-

6. *Taverns, etc.* To regulate taverns and other houses for public entertainment.

7. *Theaters, etc.* To regulate or prohibit all theatrical exhibitions and public shows, and all exhibitions of whatever name or nature for which money, or other reward, is in any manner demanded or received; but lectures on historic, literary or scientific subjects shall not come within the provisions of this section.[1]

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tion of these provisions does in fact create a nuisance, it is declared to be one in law, and authority is given not to abate any man's house, but to abate the nuisance that exists thereat. * * * * * * For the same reason it might be declared unlawful to sell poison to a child, or a dagger to a madman, it might be made an offense to sell intoxicating drink to a minor or a drunkard; and for the same reason that any other common nuisance might by law be abated, the business of a common tippling house might be subjected to that fate." Thurman, C. J., in *Miller* v. *State*, 3 O. S. 475-486.

Where the charter gave to a town council the "power to grant or refuse license to all ale houses, confectioneries, or groceries, established within the limits of said town, and regulate the same as they shall think proper," and made it the "special duty" of the mayor to see the ordinances of the town enforced, and an ordinance forbid the opening of a "grocery-shop, or vending by retail within the limits of the town, bread, cakes, ale, wine, porter, mead, cider, metheglin, beer, confectionery, or spiritous liquors," without license under penalty of not exceeding five dollars. *Held*—1. That the mayor, though a citizen, had jurisdiction to try a complaint for a breach of the ordinance. 2. That the ordinance was valid, though it enumerated articles licensed to be sold by the Court of Common Pleas, for state or county purposes; and that it was not in restraint of trade. *Thomas* v. *Mount Vernon*, 9 O. 290.

The charter of a town granted power to license houses of public entertainment, and to impose a fine not exceeding ten dollars for retailing spiritous liquors without license; the general law of the state provided, that if any person should retail spiritous liquors without being licensed, he should forfeit any sum not exceeding one hundred dollars, nor less than five dollars. *Held:* That the jurisdiction to punish under the ordinance and the general law was concurrent, but that a conviction under either jurisdiction would be a bar to a prosecution in the other. *Wightman* v. *State*, 10 O. 452.

An ordinance of the town council of Akron, to prohibit, under a penalty, persons, not licensed tavern-keepers or physicians, from vending and retailing, within the corporate limits, ardent spirits or other intoxicating liquors, was consistent with the constitution of 1802 and the laws of Ohio, and, therefore, valid.

Strong beer is intoxicating liquor within the letter and spirit of the ordinance. Retailing does not, necessarily, import a consideration for the thing retailed. *Markle* v. *Akron*, 14 O. 586.

There are many offenses, made so by statute, which are but quasi criminal, and where the legislature may direct the mode of redress, untrammeled by constitutional provision. In such cases the prosecution is not carried on in the name of the state, but of the corporation. *Ib.*

The ordinance of a municipal corporation, prohibiting the sale of pure Ohio wine, ale, beer and cider, to be drank where sold, and prohibiting the sale of such liquors in less quantity than one gallon, is void, because inconsistent with and against the policy of the general statute of May 1, 1854, "to provide against the evils resulting from the sale of intoxicating liquors in the State of Ohio." *Thompson* v. *Mount Vernon*, 11 O. S. 688. See cases collected in Ohio Digest, 265.

[1] *Infra*, ch. 37.

8. *Sale of animals.* To regulate or prohibit the sale of live domestic animals at public auction, on the streets, alleys, highways, or any public ground within the corporation.

9. *Auctioneering.* To regulate, license, or prohibit, the auctioneering of goods, wares and merchandise imported into the corporation for the purpose of being sold at auction.[1]

10. *Use of carriages, drays, etc.* To regulate the use of all carts, drays, wagons, hackney-coaches, omnibuses, and every description of carriages which may be kept for hire, and all livery stables.

11. *Running at large of cattle, etc.* To regulate and restrain the running at large, within the limits of the corporation, of cattle, horses, swine, sheep, goats, geese and other animals, and to impound and hold the same, and, on notice to the owners, to authorize the sale of the same, or any portion thereof, for the penalty imposed by any ordinance and the costs and expenses of the proceeding.[2]

12. *Dogs.* To prevent the running at large of dogs, and injuries and annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance to that effect.

13. *Fast driving, etc.* To prevent and punish fast driving or riding of animals, or fast driving or propelling of vehicles through or on the public highways.

14. *Gunpowder, etc.* To regulate the transportation and keeping of gunpowder and other combustibles and explosives, and provide or license magazines for the same.[3]

15. *Transportation through streets.* To regulate the transportation of articles through the streets, and prevent injuries to the streets, from over-loaded vehicles.

16. *Hay, wood, coal, etc.* To regulate the weighing and measuring of hay, wood, coal, and all other articles exposed for sale.[4]

17. *Fire.* To guard against injuries by fire.

18. *Streets, alleys, etc.* To provide for the laying down of gas-pipes, to lay off, establish, open, widen, straighten, extend, improve, keep in order and repair, and to light streets, alleys, public grounds and buildings, wharves, landing places, bridges and market spaces, within the corporation, including any portion of any turnpike or plank road therein, surrendered to, or condemned by, the corporation.

19. *Canals, etc.* To construct, open, enlarge, excavate, improve, deepen, straighten or extend, any canal, ship channel, or water course, located in whole or in part within the corporation.

20. *Cleaning streets, etc.* To regulate the cleaning and sprinkling of streets, alleys and public grounds.

21. *Sewers, etc.* To open, construct, keep in order and repair, sewers, drains and ditches.[5]

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[1] *Infra*, ch 34.

[2] *Supra*, § 53; *Marietta* v. *Fearing* (4 O. 427–432); *Dodge* v. *Gridley* (10 O. 159.)

[3] *Supra*, § 53. [4] *Infra*, ch. 41. [5] *Infra*, ch. 50.

22. *Water closets.* To establish, repair and regulate public water closets and privies.

23. *Hospitals, etc.* To erect, establish, regulate and repair, pest houses and hospitals.

24. *Board of health.* To establish a board of health, and to invest it with such powers, and impose upon it such duties, as may be necessary to secure the inhabitants from the evils of contagious, malignant and infectious diseases.[1]

25. *Jails, etc.* To build jails, or other places of confinement, and to regulate the same.

26. *Markets.* To erect market houses, and establish and regulate markets.

27. *Buildings.* To regulate the erection of buildings and other structures, within the corporate limits.

28. *Cemeteries.* To provide public cemeteries, and for the improvement and protection thereof, and to regulate the burial of the dead.

29. *Police.* To organize and maintain a police department.

30. *Fire department.* To organize and maintain a fire department, erect necessary buildings therefor, and to purchase and hold all necessary hose, engines, carts, ladders, carriages, tools and implements therefor.

31. *Water works.* To provide for a supply of water, by the construction of wells, pumps, cisterns, aqueducts, water pipes, reservoirs and water works, and for the protection thereof; to prevent unnecessary waste of water, and the pollution thereof.

32. *Parks, etc.* To hold and improve public grounds and parks, and to provide for the protection and preservation of the same.

33. *Appropriation of private property.* To appropriate private property for the uses of the corporation.

34. *Real estate.* To acquire, by purchase or otherwise, and hold, real estate, or any interest therein, and other property, for the uses of the corporation, and to sell or lease the same.

35. *School houses.* To erect and maintain buildings for public schools.

36. *Halls.* To erect and maintain public halls.

37. *Libraries, etc.* To establish and maintain free public libraries and reading rooms; to purchase books, papers, maps and manuscripts therefor; and to receive donations and bequests of money or property for the same in trust, or otherwise. The council may appoint such trustees or officers, and confer upon them such authority as may be necessary to render any library or reading room so established of public utility. They may also pass necessary by-laws and regulations for the protection and government of the same.

38. *Ferries.* To license and regulate ferries within the corporate limits.

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[1] *Infra*, ch. 23.

CHAPTER XVI.

VAGRANTS, CRIMINALS, AND SUSPICIOUS CHARACTERS.[1]

Section.		Section.	
200.	Public peace and morals.	202.	Imprisonment therefor.
201.	Punishment for breaches of the peace, etc.	203.	Regulation of labor.
		204.	Hospitals, etc.

Sec. 200. *Public peace and morals.* The council of any city or incorporated village shall have power to provide for the punishment of persons disturbing the good order and quiet of the village, by clamor and noise in the night season, by intoxication, drunkenness, fighting, using obscene or profane language in the streets and other public places, to the annoyance of its citizens, or otherwise violating the public peace by indecent and disorderly conduct or by lewd and lascivious behavior; and they shall have power, in like manner, to provide for the punishment of vagrants, common street beggers, common prostitutes, habitual disturbers of the peace, known pickpockets, gamblers, burglars and thieves, watch stuffers, ball-game players, persons who practice any trick, game or device with intent to swindle, persons who abuse their families, and suspicious persons who can not give reasonable account of themselves.

Sec. 201. *Punishment for breaches of the peace, etc.* Such punishment may be either by imposing and collecting fines, or by imprisonment in the proper jail at hard labor, or both, at the discretion of the court; but no such person shall be fined for a single offense to exceed fifty dollars, and such imprisonment and hard labor shall, for the first offense, not exceed thirty days, for the second offense, ninety days, for the third offense, six months, and for the fourth or any further repetition of the offense, one year.

Sec. 202. *Imprisonment therefor.* The council shall have power to provide that all such persons who shall refuse or neglect to pay the fine imposed on conviction of any such offense, and the costs of prosecution, shall be imprisoned and kept at hard labor, until, at the rate of seventy-five cents for each day's labor, exclusive of Sundays, they shall have earned an amount equal to such fine and costs.

Sec. 203. *Regulation of labor.* The council shall have power to make suitable regulations to conduct such labor to the best advantage, and in a manner consistent with the age, sex, and health of the prisoners, and such labor may be done at the corporation prison, workhouse or elsewhere, if within a suitable enclosure, and under the charge of such officers or other persons as the council may select.

Sec. 204. *Hospitals, etc.* The council may provide suitable hospitals for the reception and care of such prisoners as may be diseased or disabled, the same to be under such regulations and under the charge of such person as the council may direct.

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[1] Act of March 29, 1859 (4 Curwen, ch. 1984); Act of March 23, 1866 (63 O. L. 49); Act of April 10, 1861 (58 O. L. 77); Act of March 31, 1864 (61 O. L. 130.)

CHAPTER XVII.

POLICE.

SECTION.
205. Appointment of police, etc.
206. Equal number in the several wards.
207. Policemen's bonds.
208. Officers of police.
209. Organization of police.
210. Duties and powers of policemen.
211. Suspension of policemen for cause.
212. Special policemen.
213. Compensation of policemen.
214. Exemption of certain cities from provisions of this act concerning police.

SEC. 205. *Appointment of police, etc.* The council of cities and incorporated villages shall have power to provide by ordinance for the appointment by the mayor, by and with the consent of the council, of such number of police and night watchmen as they may think necessary for the good government of the corporation, who shall hold their office for one year unless sooner removed.[1]

SEC. 206. *Equal number in the several wards.* In corporations divided into wards, an equal number of police and night watchmen shall be provided for the several wards.[1]

SEC. 207. *Policemen's bonds.* The night watchmen and police shall, before entering upon their duties, give bond with good and sufficient surety to the satisfaction of the mayor, for the faithful performance of their duties.[1]

SEC. 208. *Officers of police, etc.* The council shall also have power to provide by ordinance for the appointment of subordinate officers of the police and night watchmen, and to prescribe the number of such officers. They may also provide, in addition to the regular watch, for the appointment of a reserved watch, to consist of a suitable number of persons in each ward, when the corporation is divided into wards, to be called into duty in whole or in part, in such manner and on such occasions as the council may prescribe, and by the mayor, or the officers of the police under his direction, and in special cases, or in cases of emergency.[2]

SEC. 209. *Organization of police.* The police and night watchmen shall be organized by the council under the general superintendence of the mayor, marshal, chief of police, or other officers of the police, and the council shall prescribe their duties, and define their powers, in such manner as will most effectually preserve the peace of the corporation, secure the inhabitants thereof from personal violence, and their property from fire and unlawful depredations.[3]

SEC. 210. *Duties and powers of policemen.* It shall be the duty of the police and night watchmen and the officers thereof, under the direction of the mayor, and in conformity with the ordinances of the corporation, to suppress all riots, disturbances and breaches of the peace; to pursue and arrest any person fleeing from justice, in any part of the state; to apprehend any and all persons in the act of committing any offense against the laws of the state, or the ordinances of

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[1] Act of 1852, § 71, February 21, 1867; 64 O. L. 21.

[2] Act of 1852, § 74.

[3] Act of 1852, § 62.

the corporation, and forthwith bring such person or persons before the police court, or other competent authority, for examination; and at all times diligently and faithfully to enforce all such laws, ordinances and regulations, for the preservation of good order and the public welfare, as the council may ordain, and for such purpose they shall have all the power of constables; they may, upon view, arrest any person or persons who may be guilty of a breach of the ordinances of the corporation, or of any crime against the laws of the state; and may, upon reasonable information, supported by affidavit, procure process for the arrest of any person or persons who may be charged with a breach of any of the ordinances of the corporation.[1]

SEC. 211. *Suspension of policemen for cause.* The mayor shall have power to suspend any policeman or night watchman for neglect of duty, misconduct, or other sufficient cause, and may appoint other persons to fill the temporary vacancy caused thereby; and such action shall thereafter be taken as is provided in section one hundred and twenty-one.[2]

SEC. 212. *Special policemen.* The mayor, in cities of the first class, may appoint such persons, not exceeding eight in number, with the pay and powers of police in such city, as may be necessary to attend the sittings and execute the orders of the police court, and perform duty at the city prison.[3]

SEC. 213. *Compensation of policemen.* The council shall fix the compensation or fees the policemen and night watchmen, and the officers thereof shall receive for their services, and they shall not demand or receive any other fee, perquisite or reward.[4]

SEC. 214. *Exemption of certain cities from provisions of this act concerning police.* The provisions of this act, in respect to police and night watchmen, shall not apply to cities governed by the following acts:

An act entitled "an act authorizing the appointment of metropolitan police commissioners in cities of the first class, with a population of less than one hundred thousand inhabitants at the last federal census," passed April 5, 1866.[5]

Also, an act entitled "an act to amend 'an act authorizing the appointment of metropolitan police commissioners in cities of the first

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[1] Act of 1852, § 74.

Under the provisions of the act of May 3, 1852, the City Council may lawfully authorize police officers of the city, to arrest, upon view, and without warrant, any person in the act of violating the ordinances of the city, made for the preservation of good order and public convenience. *White* v. *Kent*, 11 O. S. 550.

[2] Act of 1852, § 71, as amended April 18, 1854 (4 Curwen, ch. 1451); § 50, as amended February 21, 1867 (64 O. L. 21.)

[3] Act of March 14, 1859, § 6, as amended March 9, 1866; 63 O. L. 33.

[4] Act of 1852, § 50, as amended February 21, 1867 (64 O. L. 21); Act of March 14, 1859, § 5, as amended March 8, 1860 (4 Curwen, ch. 2070.)

[5] 63 O. L. 104.

class, with a population less than one hundred thousand inhabitants at the last federal census,' passed April 5, 1866," passed April 2, 1868, (65 O. L. 45.)

Also, an act entitled "an act to provide for the organization, regulation and more efficient government of the police in cities of the first class, which have been advanced to that grade between decennial periods," passed May 6, 1868 (65 O. L. 151.)

CHAPTER XVIII.

CORPORATION PRISON.

SECTION.
215. Prisons, station houses, etc.
216. Sustenance, etc., for prisoners.
217. Provision therefor by council.
218. Custody of prisoners where there is no workhouse.

SEC. 215. *Prisons, station-houses, etc.* The council of any city or incorporated village shall have power to erect, establish and maintain a prison and one or more watch or station houses, as shall be necessary; and such prison, watch or station houses shall be under the control of the marshal, or chief of police, under such rules and regulations as the council may prescribe.[1]

SEC. 216. *Sustenance, etc., for prisoners.* It shall be the duty of the marshal or chief of police to provide all persons confined in such prison, watch or station houses, with necessary food during such confinement, and to see that such places of confinement are kept clean and made comfortable for the inmates thereof.[1]

SEC. 217. *Provision therefor by council.* The council shall provide, by ordinance, for sustaining all persons sentenced to or confined in such prison at the expense of the corporation; and on the presentation of bills for food, sustenance and necessary supplies to the proper officer, certified to by such person or persons as the council may designate, not exceeding forty cents a day, such officer shall audit the same under such rules and regulations as the council may prescribe, and draw his order on the treasurer of the corporation in favor of the officer presenting such bill.[1]

SEC. 218. *Custody of prisoners where there is no work house.* In corporations in which there is no work house, the council may, by ordinance, provide for the keeping of persons convicted and sentenced to hard labor, during the term of their imprisonment, at such place or places within the corporation as the council may determine.[1]

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[1] Act of 1852, § 82, as amended April 28, 1854 (4 Curwen, ch. 1460); Act of March 14, 1859, § 6, as amended March 8, 1860 (4 Curwen, ch. 2070); Act of April 10, 1861 (58 O. L. 77); Act of March 30, 1864 (61 O. L. 88); Act of April 12, 1865 (62 O. L. 136.)

CHAPTER XIX.

HOUSES OF REFUGE AND CORRECTION.[1]

SECTION.
219. Houses of refuge and correction.
220. Directors of houses of refuge and correction.
221. Their appointment, terms of office, etc.
222. Election of president, clerk, etc.
223. Record of proceedings, etc.
224. Powers in erection of buildings, etc.
225. Male and female apartments to be separate.
226. Separate buildings for males and females.
227. Appointment of superintendent and subordinate officers.
228. Rules and regulations.
229. Rules, etc., to be approved by council.
230. How books shall be kept.
231. Quarterly statement to be made to council.
232. Accounts to be balanced and reported annually.
233. Superintendent to have control, etc.
234. His responsibility.
235. Deputy superintendent.
236. Notice of completion of building to be published.
237. Removal of officers for cause.
238. When infants may be received, etc.
239. Custody and confinement of infants.
240. When they may be put to labor.
241. Disposition of infants until of age.
242. Commitment to refuge on recommendation of grand jury.
243. Commitment to refuge by court in certain cases.
244. Infants entitled to private examination and trial.
245. Infants to be placed in refuge instead of jail.

SECTION.
246. Disposition of infants when refuge is full.
247. Statement of age, residence, cause, etc., must be furnished.
248. What record of commitment shall contain.
249. Term of commitment, etc.
250. Employment of infants in refuge.
251. Board may bind them as apprentices.
252. Committee of indentures, etc.
253. When indenture to be cancelled.
254. When indentured infant may be reclaimed.
255. Arrest, etc., of fugitives from refuge or apprenticeship.
256. Disposition of stubborn and irreclaimable infants.
257. Duty of sheriff to notify prosecuting attorney, etc.
258. Final disposition of such stubborn infant.
259. How expenses shall be paid.
260. How excess of expenses shall be raised.
261. What return to writ of habeas corpus shall contain.
262. Circumstances of commitment, how far examinable.
263. Application of aggrieved party for review of commitment.
264. When infant shall be delivered to applicant.
265. Applicant may bring action in court.
266. Costs of such action.
267. When real estate may be sold.
268. Deed, and proceeds of sale.
269. Action against directors, how brought.
270. This act not to affect refuges heretofore established.

SEC. 219. *Houses of refuge and correction.* The council of any city or incorporated village shall have power to establish, erect and maintain houses of refuge and correction.

SEC. 220. *Directors of houses of refuge and correction.* The management of houses of refuge and correction, established or which may hereafter be established, and the management and care of the inmates thereof, the erection and enlargement of any building as a house of refuge and correction, or any addition or additions thereto, repairs and furnishing thereof, erection of any work shops and furnishing the same with the necessary machinery and tools, and the cultivation and improvement of any grounds therewith connected, shall be vested in a board of five directors, to be called the "Board of Directors of the House of Refuge and Correction."

SEC. 221. *Their appointment, terms of office, etc.* The said directors shall be freehold electors of the corporation; they shall be appointed by the mayor, with the consent of the council; and shall

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[1] Act of April 16, 1857 (4 Curwen, ch. 1760); Act of April 13, 1867 (64 O. L. 130); Act of 1852, §§ 79, 80, 81; § 78, as amended April 8, 1856 (4 Curwen, ch. 1632); Act of March 9, 1866 (63 O. L. 30.)

hold their office for the term of five years, except that at the first appointment one of the said directors shall be chosen to serve for one year, one for two years, one for three years, one for four years, and one for five years; and annually thereafter one director shall be appointed; and a majority of the directors shall constitute a quorum. They shall not receive any compensation for their services.

SEC. 222. *Election of president, clerk, etc.* Said board shall elect, annually, at the first regular meeting in May, one of their number as president; and, at the same meeting, it shall appoint a secretary and clerk, and such other officers as may be necessary, and fix the compensation for their services, subject to the approval of the council.

SEC. 223. *Record of proceedings, etc.* The said board shall keep a complete record of all its proceedings; and it shall be necessary to the validity of every contract it may authorize to be made, that the same has been assented to at a regular meeting, by a majority of all the members, and a minute thereof entered on the journal of its proceedings.

SEC. 224. *Powers in erection of buildings, etc.* In the erection of any building as a house of refuge and correction, or of any addition or additions thereto, or any enlargement thereof, and in the repair and furnishing the same, and in the erection of any shops and providing the same with machinery and tools, the said board shall have the same powers, be governed by the same regulations and perform the same duties, so far as applicable, as are prescribed for the government of trustees of hospitals in chapter twenty-one; and the power of the council in relation to the erection and repair of said buildings, and the conduct of the board, shall be the same, so far as applicable, as prescribed in said chapter, in relation to the erection and repair of buildings for hospital purposes.

SEC. 225. *Male and female apartments to be separate.* In the erection of any such buildings, and in any addition or additions thereto, or any enlargement thereof, the said board shall have power to so construct the same that the male and female inmates shall be provided with separate departments and accommodations; and that the grounds therewith connected shall be so separated, by partition walls or fences, that the males and females may be enabled to occupy separate portions thereof.

SEC. 226. *Separate buildings for males and females.* Whenever, in the opinion of the board, it shall be deemed advisable to provide separate buildings for the accommodation of males and females, such buildings shall be erected at least one-fourth of a mile apart, and the grounds around each shall be inclosed by suitable walls or fences.

SEC. 227. *Appointment of superintendent and subordinate officers.* The said board shall have power to appoint a superintendent, deputy superintendent, and such other subordinate officers, guards and employes as may be necessary, and fix their compensation and prescribe their duties, and to make all such regulations for their management and government as they shall deem expedient.

SEC. 228. *Rules and regulations.* The said board shall have

power to make, establish and enforce rules and regulations for its own government, and the government and control of such institution, its officers and inmates, and make contracts for supplies and the labor of its inmates.

SEC. 229. *Rules, etc., to be approved by council.* No resolution or act of said board making any appointment or fixing the compensation of any appointee, and no appropriation of money for any purpose, other than the ordinary and necessary expenses and repairs of the institution, and no by-law, rule or regulation it may establish, shall be of any validity until approved by the council.

SEC. 230. *How books shall be kept.* The books of said institution shall be so kept as to clearly exhibit the true state and condition of the inmates, the number received and discharged, and for what cause committed, the number employed as servants or in cultivating the premises, the number employed in each branch of industry carried on, and the receipts from, and expenditures for and on account of each department of business, or for the improvement of the premises.

SEC. 231. *Quarterly statement to be made to council.* Said board shall cause a quarterly statement to be made out, specifying minutely all receipts and expenditures, from whom and for what purpose received, and to whom and for what purpose paid, with proper vouchers for each item, and shall submit such statement, properly certified, to the council for examination and approval.

SEC. 232. *Accounts o be balanced and reported annually.* The accounts of said institution shall be annually closed and balanced on the first Monday of January in each year, and full reports of the preceding year shall then be made and submitted to the council, and shall be published in the official paper of the corporation, or in such other form as said council may direct; and the council may require such other and further reports and exhibits of the condition and management of such institution as to them shall seem necessary and proper.

SEC. 233. *Superintendent to have control, etc.* The superintendent of said institution shall have the entire control and management of its affairs, subject to the laws and the ordinances of the corporation, and the rules and regulations adopted by the board for its government; and it shall be his duty to obey and carry out all written orders and instructions of the board not inconsistent with the laws, rules and regulations relating to the government of said institution.

SEC. 234. *His responsibility.* He shall be responsible for the manner in which said institution is managed and conducted, shall reside at the same, devote his time and attention to the proper business thereof, and shall visit and examine into the condition of every department thereof, and of each person confined therein, daily, or as often as good order or necessity may require, and he shall exercise a general supervision and direction in regard to all matters of discipline, police regulation and business of said institution.

SEC. 235. *Deputy superintendent.* In the absence or inability of the superintendent, the deputy superintendent of said institution shall,

so far as relates to the discipline thereof, perform the duties of the superintendent.

SEC. 236. *Notice of completion of building to be published.* When any house of refuge and correction has been erected, as is provided herein, and is so far complete as to insure the safe confinement and employment of the persons intended to be confined therein, the said board shall cause notice of that fact to be published in some newspaper of general circulation in the corporation and county.

SEC. 237. *Removal of officers for cause.* The board may, for misconduct or willful neglect of duty, and upon sufficient proof thereof, remove any officer or employe of said institution, except the superintendent thereof, who shall be removable for the causes and in the manner provided for the removal of city officers, and any employe of the superintendent may be discharged at his discretion.

SEC. 238. *When infants may be received, etc.* The board may, at their discretion, receive into such institution infants under the age of sixteen years, committed to their custody in either of the following modes, to wit:

1. Infants committed by any justice of the peace within the county, by the mayor of the corporation, the judge of the police or other municipal court, any judge of the court of common pleas of the county, the probate judge of the county, and in those counties in which there may be a superior court, by any judge of such superior court, on the complaint and due proof thereof by the parent, guardian, or next friend of such infant, that, by reason of incorrigible or vicious conduct, such infant has rendered his or her control beyond the power of such parent, guardian or next friend, and made it manifestly requisite that, from regard to the future welfare of such infant, and for the protection of society, he or she should be placed under the guardianship of the board of directors of such house of refuge and correction.

2. Infants committed by the authorities aforesaid, where complaint and due proof have been made that such infant is a proper subject for the guardianship of the directors of such institution, in consequence of vagrancy, or of incorrigible or vicious conduct, and that from the moral depravity, or otherwise, of the parent or guardian, or next friend, in whose custody such infant may be, such parent, guardian, or next friend, is incapable or unwilling to exercise the proper care and discipline over such incorrigible or vicious infant.

3. Infants who are destitute of a suitable home and of adequate means of obtaining an honest living, or who are in danger of being brought up to lead an idle and immoral life, may be committed to the guardianship of the directors of such institution, by the trustees of any township within the county in which such institution may be situated, or by the mother, when the father is dead, or has abandoned his family, or does not provide for their support, or who is an habitual drunkard.

SEC. 239. *Custody and confinement of infants.* Any infant under the age of sixteen years who shall be convicted of any offense made punishable by imprisonment under any ordinance of the city, or who shall be liable to be committed to prison under any such ordinance,

may be confined in such house of refuge and correction under such rules and regulations as the directors may prescribe; and it shall be lawful for the directors of such institution to receive and take charge of any children who may be committed to their custody by the court of common pleas, or any judge, justice of the peace, or other officer, under any law of the state.

SEC. 240. *When they may be put to labor.* Any infant over the age of sixteen years, convicted of a violation of any ordinance, and liable to be punished therefor by imprisonment, or who may be liable to imprisonment for neglect or refusal to pay a fine imposed for the violation of any ordinance, may, in lieu thereof, be committed to the house of refuge and correction, and put to hard labor, in such manner as may be prescribed by ordinance of the council.

SEC. 241. *Disposition of infants until of age.* Any infant under the age of sixteen years who shall be liable to confinement in the jail in any county in which a house of refuge and correction may be situated, or in the penitentiary of the state from any such county, may, at the discretion of the court, or magistrate giving sentence, be placed in such institution until of legal age, under the exclusive control and guardianship of the directors of such institution.

SEC. 242. *Commitment to refuge on recommendation of grand jury.* If any accusation of the commission of any crime shall be made against any infant under the age of sixteen years, before the grand jury of the county in which such house of refuge and correction may be situated, and the charge appears to be supported by evidence sufficient to put the accused upon a trial, the grand jurors may, in their discretion, instead of finding an indictment against the accused, return to the court that it appears to them that the accused is a suitable person to be committed to the guardianship of the directors of the house of refuge and correction, and the court shall thereupon order such commitment.[1]

SEC. 243. *Commitment to refuge by court in certain cases.* If any infant under the age of sixteen years shall be arraigned for trial in any court having criminal jurisdiction in any county in which a house of refuge and correction may be situated, on a charge of any violation of any criminal law in this state, or ordinance of the corporation, the judge may, with the consent of the accused, arrest, at any stage of the cause, any further proceedings upon the part of the prosecution, and commit the accused to the guardianship of the directors of such institution.

SEC. 244. *Infants entitled to private examination and trial.* All infants under the age of sixteen years who may be accused of any

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[1] In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. Const. of Ohio, Art. I, § 10.

offense punishable by imprisonment, in any county in which a house of refuge and correction may be situated, shall be entitled to a private examination and trial, to which only the parties shall be admitted, unless one of the parents, the guardian or other legal representative, demand a public trial, in which case all proceedings shall be in the usual form.

SEC. 245. *Infants to be placed in refuge instead of jail.* Any infant under the age of sixteen years who may be committed, in any county in which a house of refuge and correction may be situated, for trial, or as a witness, shall be placed in such institution, subject to the order of the court making such commitment, and in no case in the county jail.

SEC. 246. *Disposition of infants when refuge is full.* If, at any time, any house of refuge and correction shall have as many infants under its charge as can be conveniently accommodated therein, or as many as the funds of such institution are adequate to maintain, the board shall not be required to receive other infants, but shall order their chief officer to return that fact to any magistrate, court or person authorized to commit, who shall have sent an infant to such institution; and thereupon the case of such infant shall be disposed of as if this chapter had not been enacted, and as if no proceedings had taken place under it.

SEC. 247. *Statement of age, residence, cause, etc., must be furnished.* In all cases where an infant is committed to the instruction and discipline of a house of refuge and correction under the guardianship of the directors thereof, the person ordering such commitment shall, at the same time, furnish to the directors or officers of such institution a true statement, in writing, of the age of such infant, and the reason for such commitment; and until such statement is furnished, the directors or officers aforesaid may decline receiving such infant.

SEC. 248. *What record of commitment shall contain.* In all cases where the commitment is ordered by any official person whose proceedings are usually evidenced by a record, or where the occasion of the commitment is a criminal charge against the infant, no other record shall be made, unless demanded by the infant, or his parents, or guardian, than that, in substance, such infant (naming him), who, on a day therein named, was of the age of — years, having been brought before such court or officer, and the court or officer having ascertained by the testimony of the witnesses therein named that such infant was a suitable person to be committed to the discipline and instruction of the house of refuge and correction under the guardianship of the directors thereof, such infant was so committed, and delivered to the charge of such directors.

SEC. 249. *Term of commitment, etc.* No commitment of an infant to a house of refuge and correction shall be for a shorter period than till such infant shall be reformed or attain the age of majority, except in case of infants committed to await their trial, or as witnesses, and except in such case as the board may, by their general

rules, provide ; but any infant, by whomsoever committed, or for whatever cause committed, may at any time be discharged upon the order of the board, duly entered upon their minutes.

SEC. 250. *Employment of infants in refuge.* The board shall have power to place infants committed to their care, during their minority, at such employment, for account of the institution or otherwise, and cause them to be instructed in such branches of useful knowledge, as may be suited to their years and capacities.

SEC. 251. *Board may bind them as apprentices.* Said board shall have power, at discretion, to bind out the said infants committed to their care, with their consent, as apprentices during their minority, to such persons and at such places, to learn such proper trades and employments, as in their judgment will be most conducive to their reformation and amendment, and as will tend to the future benefit and advantage of such infants.

SEC. 252. *Committee of indentures, etc.* The said board shall, for such purpose, have power to appoint a committee of one or more, of their number, with power to execute and deliver, on behalf of the board, indentures of apprenticeship for any infant in such institution whom they may deem a proper person for an apprenticeship ; and such indentures shall have the like force and effect as other indentures of apprenticeship under the laws of Ohio, and the indentures shall be filed and kept in the office of such institution, and it shall not be necessary to file or record them in any other place or office.

SEC. 253. *When indenture to be cancelled.* In case any infant so apprenticed shall prove untrustworthy and unreformed, the board may, at their discretion, permit such infant to be returned to such house of refuge and correction, to be held in the same manner as before said apprenticeship, and may, thereupon, order the indentures for such infant to be cancelled.

SEC. 254. *When indentured infant may be reclaimed.* If, in the opinion of the board, any infant apprenticed out by them shall have an unsuitable home, or if the person to whom said infant is indentured shall become unfit or incapable to properly raise or take care of such infant, the directors may, at their discretion, return such infant to the institution from which it was indentured.

SEC. 255. *Arrest, etc., of fugitives from refuge or apprenticeship.* Any fugitive from a house of refuge and correction, or a fugitive from apprenticeship under indentures executed as above provided, may be arrested and returned to such institution by a sheriff or constable of any county in this state, or police officer of the corporation, or officer of such institution, on the written order of any two directors of such institution, directed to such officer or officers ; and may be delivered to the custody of such officer of a house of refuge and correction, as the directors may name.

SEC. 256. *Disposition of stubborn and irreclaimable infants.* When any infant shall be convicted of any offense against the laws of this state, punishable with imprisonment in the penitentiary, or in the jail of the county where such house of refuge and correction may

be situate, and shall, under existing laws, be sent to the house of refuge and correction, instead of the penitentiary or jail, and shall refuse to submit to the rules of said institution, and prove to be stubborn and irreclaimable, in the opinion of a majority of said board, such infant may, by their order, be delivered into the custody of the sheriff of said county, with a written statement of the cause of commitment, and of the conduct and character of such infant, as exhibited in said institution, which statement shall be prepared and signed by the superintendent of the institution.

SEC. 257. *Duty of sheriff to notify prosecuting attorney, etc.* It shall be the duty of the sheriff to receive such infant into his custody, and file said statement in the office of the clerk of the court of common pleas, or in the office of the clerk of the court in which such infant shall have been tried, and to notify the prosecuting attorney of the county thereof.

SEC. 258. *Final disposition of such stubborn infant.* Thereupon, the prosecuting attorney shall cause such infant to be brought before the court of common pleas, or before the court in which such infant may have been tried, to receive the sentence which the court shall deem just, according to the law, for the offense of which such infant shall have been convicted, as aforesaid.

SEC. 259. *How expenses shall be paid.* The expenses of maintaining infants committed to any house of refuge and correction, by a court or magistrate of the county in which such institution may be situated, or by the police or other court of the corporation, for offenses against any law of the state, or for trial, or as a witness, shall be paid by the county; the expenses of infants committed by township trustees shall be paid by the township, and of those committed by parents and guardians, shall be paid by them, unless in cases where the board shall otherwise determine, all which expenses shall be ascertained and fixed by the board.

SEC. 260. *How excess of expenses shall be raised.* The expense of maintaining and administering the affairs of houses of refuge and correction, over and above the receipts thereof, shall be audited and paid, from time to time, by the council of the corporation, and a tax for said expenses shall be levied and collected as a part of the ordinary expenses of the corporation.

SEC. 261. *What return to writ of habeas corpus shall contain.* It shall be a sufficient return to any writ of habeas corpus, directed to any person or officer inquiring into the cause of the detention of any infant committed to a house of refuge and correction, that the infant named in the writ was, on a day therein named, committed to the guardianship of the directors of the house of refuge and correction in the city or incorporated village of ———, (as the case may be,) by the person or officer who executed the commitment, naming him, until such infant should arrive at legal age, and that that period has not arrived.

SEC. 262. *Circumstances of commitment, how far examinable.* Where a commitment has, in fact, been executed by a person authorized

by this chapter to execute it, the existence of the circumstances justifying its execution, shall not be otherwise examinable than in an action against the directors of such institution, as provided in this chapter.

SEC. 263. *Application of aggrieved party for review of commitment.* If any parent, guardian, master to whom an infant has been apprenticed, any person occupying the position of parent, protector or guardian in fact, or any relative by blood or marriage, not further remote than first cousin to such infant, shall feel aggrieved by the commitment of any infant to the directors of a house of refuge and correction, by any person authorized by this act to commit such infant, he shall make a written application to the board at such time as the directors may, by rule or resolution, provide for hearing applications, not later than the next regular meeting of the board, to have the infant delivered to him, which application shall state the ground of the applicant's claim to the custody of such infant, and the reasons for claiming such custody.

SEC. 264. *When infant shall be delivered to applicant.* Within ten days after hearing such application, the directors shall decide; and if they shall be of opinion that the welfare of such infant will be promoted by granting the application, they shall make an order to that effect, otherwise they shall decline the application.

SEC. 265. *Applicant may bring action in court.* The applicant may, if the application be declined, upon first giving security for the payment of all costs, commence an action in the court of common pleas of the county, or, in counties in which there may be a superior court, in the superior court, for the recovery of the infant, against the directors of the house of refuge and correction; which action shall be conducted in all respects as actions under the code of civil procedure.

SEC. 266. *Costs of such action.* The costs of such action shall be paid by the applicant, unless the court shall certify, in the journal entry of the judgment, that the refusal of the directors to grant the application of the plaintiff was plainly unreasonable, or the original commitment manifestly improper and unnecessary.

SEC. 267. *When real estate may be sold.* The directors of any house of refuge and correction, shall have power to negotiate for the sale of any real estate owned or held by donation or purchase, or either, for the use and benefit of such house of refuge and correction, when such real estate shall not be necessary for the accommodation of the inmates of such institution; and upon the completion of such negotiations, and their approval by the council, the directors shall present to the council the terms and conditions of the sale agreed upon.

SEC. 268. *Deed and proceeds of sale.* The council shall, thereupon, order the execution of a deed or deeds, for such real estate, to the parties named by the directors, in conformity to the terms agreed upon; and the proceeds of such sale or sales shall be placed in the corporation treasury to the credit of the house of refuge and correction fund, and be held and disbursed as other funds are held and disbursed for such institution.

SEC. 269. *Action against directors, how brought.* Actions may

be brought by and against the directors of the house of refuge and correction, before any court of competent jurisdiction; and process may be served by leaving a copy of the writ with any director, or at the office of such institution, with any officer thereof.

SEC. 270. *This act not to affect refuges heretofore established.* Any house of refuge and correction heretofore established and governed under the provisions of an act entitled "an act to authorize the establishment of houses of refuge," passed April 16, 1857, shall continue to be governed, in all respects under said act, as though this act had not been passed.

CHAPTER XX.

WORK-HOUSES.[1]

SECTION.
271. Establishment and government of work-houses.
272. Direction and management thereof.
273. Appointment and term of office of directors.
274. Powers and duties of the board.
275. Commitment of violators of law.
276. Confinement and labor.
277. Prompt commitment, and fees.
278. Discharge, and record thereof.
279. Punishment for escape, or attempt to escape.
280. Excess of expenses, how raised.
281. Officers to have police powers.
282. Infants received, where there is no house of refuge.

SEC. 271. *Establishment and government of work-houses.* The council of any city or incorporated village shall have power to establish, erect and maintain a work-house, and such work-house, and any work-house heretofore established, shall be governed by the provisions of this chapter.

SEC. 272. *Direction and management thereof.* The direction, management and control of any work-house, and the maintenance and care of the convicts therein, shall be vested in a board of five directors, who shall be called, "The Board of Work-house Directors;" and said directors shall be freehold electors of the corporation, and serve without compensation.

SEC. 273. *Appointment and term of office of directors.* Said directors shall be appointed by the mayor, with the consent of the council, and shall hold their office for five years, except at the first appointment one shall be appointed to serve for one year, one for two years, one for three years, one for four years, and one for five years, and thereafter one shall be appointed annually.

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[1] Act of 1852, § 78, as amended April 8, 1856; Act of March 25, 1863 (60 O. L. 44); Act of March 9, 1866 (63 O. L. 30); Act of April 13, 1867 (64 O. L. 130.)

A boy, under sixteen years of age, convicted of forgery in Hamilton county, and sentenced to confinement at hard labor in the House of Refuge, and to pay the costs of prosecution, was incompetent as a witness so long as his sentence remained unreversed or otherwise unannulled. *Poage* v. *State*, 3 O. S. 229. And although, under the Code of Criminal Procedure, § 139, no person is disqualified as a witness in a criminal prosecution by reason of his conviction of a crime, the law being in that respect the same in civil and criminal cases, yet such conviction may be shown to affect the credibility.

Sec. 274. *Powers and duties of the board.* The said board shall have the same powers, perform the same duties and be governed by the same regulations, so far as applicable, in the maintaining, erecting or enlarging any buildings for work-house purposes, or of any addition or additions thereto, or of the shops and grounds therewith connected, and of the management of the affairs thereof and care of the convicts therein, as are conferred upon and required of the board of directors of houses of refuge and correction, as provided in chapter nineteen; and the powers and duties of the council in respect to such board shall be the same, so far as applicable, as are provided in said chapter.

Sec. 275. *Commitment of violators of law.* As soon as any work-house shall be established and notice thereof published, as required in chapter nineteen, in respect to houses of refuge and correction, it shall thereafter be the duty of any court, magistrate or mayor, in the county where such work-house is established, authorized by law to sentence or commit to the county jail or corporation prison, any person over the age of sixteen years, convicted of a violation of any of the laws of this state or of the ordinances of the corporation, to sentence such person to imprisonment in such work-house.

Sec. 276. *Confinement and labor.* Any person so sentenced shall be received into such work-house, and shall be there kept and confined at labor, and shall be subject to the rules, regulations and discipline thereof until the expiration of such sentence, when such party shall be discharged.

Sec. 277. *Prompt commitment and fees.* It shall be the duty of all officers having the execution of the final sentence of any court, magistrate or mayor, sentencing convicted persons to such work-house, to cause such convicts to be conveyed to the same as soon as practicable after the sentence is pronounced; and all officers shall be paid the fees therefor allowed by law for similar services in other cases, such fees to be paid, when the sentence is by the court, out of the county treasury, and when by the magistrate, out of the township treasury.

Sec. 278. *Discharge, and record thereof.* The said board shall have power to discharge, for good and sufficient cause, any person committed to such work-house; but a record of all such discharges shall be kept and reported to the council in the annual report of the board, giving a brief statement of the reasons therefor.

Sec. 279. *Punishment for escape, or attempt to escape.* Any person lawfully committed to said work-house, who shall escape therefrom, or break the same with intent to escape therefrom, or who shall attempt by force or violence, or in any other way, to escape from said work-house, whether such escape be effected or not, shall, upon conviction thereof, before the police court or court of common pleas for the proper county, be punished by confinement in said work-house, for a term not exceeding double the term for which such person was so sentenced, to commence from and after the expiration of his or her former sentence.

Sec. 280. *Excess of expenses, how raised.* The expense of main-

taining and administering the affairs of said work-house, over and above all receipts for the labor of persons confined therein, shall be audited and paid, from time to time, by the council of the corporation, and a tax for said expenses shall be levied and collected, as a part of the ordinary expenses of the corporation.

SEC. 281. *Officers to have police powers.* The superintendent, assistant superintendent and guards of said work-house, shall have such powers of policemen as may be necessary for the proper performance of the duties of their position.

SEC. 282. *Infants received, where there is no house of refuge.* The council of any corporation owning a work-house, but not owning a house of refuge and correction, shall have power to provide for receiving into such work-house, infants in the manner prescribed in chapter nineteen; and the board of directors of such work-house shall have the power to make such rules and regulations, in regard to the admission of such infants and their management, as are provided in said chapter for the government and management of the inmates of houses of refuge and correction.

CHAPTER XXI.

HOSPITALS.[1]

SECTION.
283. Board of hospital commissioners.
284. Who shall compose the board.
285. Their term of office.
286. Their powers, compensation of appointees, etc.
287. Regular meetings, and record thereof.
288. No expenditure without authority of board; no member to be interested, etc.
289. Plans, specifications, etc.
290. Terms of contracts, etc.
SECTION.
291. Contracts to be advertised, and given to lowest bidder.
292. Bids to be accompanied by bond, etc.
293. Contract with lowest bidder.
294. Bids to be sealed, indorsed, etc.
295. Board to have management and control of hospitals.
296. Council may enter into agreement with any corporation, etc.
297. Applicability to existing hospitals.

SEC. 283. *Board of hospital commissioners.* Whenever the council of any city or incorporated village shall enter upon and take possession of any grounds purchased, appropriated, or otherwise obtained for hospital purposes, and shall, by resolution or ordinance, determine to erect thereon or rebuild a hospital, the erection and repair thereof, or any addition or additions thereto, and the management, direction

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[1] Act of March 5, 1860 (4 Curwen, ch. 2068); April 6, 1866 (63 O. L. 152); April 13, 1867 (64 O. L. 139); April 9, 1868 (65 O. L. 83); May 5, 1868 (65 O. L. 148.)

The faculty of the Medical College of Ohio are bound to render only so much *personal* service and advice to the Commercial Hospital as is consistent with their character as professors, and the duties necessarily attached to that office and their private practice.

They are entitled to appoint as many resident physicians to the Commercial Hospital as may be requisite to discharge the duties of resident physicians.

The city of Cincinnati is liable for reasonable compensation to resident physicians at the Commercial Hospital so appointed. *Alexander* v. *Cincinnati*, 2 Handy, 183.

and control of the same, shall be vested in a board of five commissioners, to be called the Board of Hospital Commissioners of such corporation.

SEC. 284. *Who shall compose the board.* Such board shall consist of the mayor of the corporation, who shall, by virtue of his office, be the president of the board, and four trustees, to be appointed by the mayor, with the consent of the council, who shall be resident freehold electors of the corporation, and such commissioners shall not receive any compensation for their services.

SEC. 285. *Their term of office.* The term of office of the appointed members of said board, shall be four years, but the members first appointed shall hold their office, respectively, as shall be determined by lot, at the first meeting of said board, for the period of one, two, three and four years, and thereafter one member shall be appointed each year for the full term of four years, and a majority of said board shall constitute a quorum.

SEC. 286. *Their powers, compensation of appointees, etc.* Such board shall have power to appoint a clerk, an architect and a superintendent, and other necessary employes, and fix their compensation, and adopt a suitable plan for such hospital, and make all contracts for the erection and furnishing the same; but the salary of such appointees, and the plan of such hospital, before any contract for the erection of the same is entered into, shall be submitted to and approved by the council.

SEC. 287. *Regular meetings, and record thereof.* The said board shall hold regular meetings at such time and place as may be agreed upon, and shall cause to be kept, a full record of all their proceedings; and no contract entered into by them, shall be valid until assented to at a regular meeting of the board, and concurred in by a majority of all the members thereof, and such assent be entered on the minutes of their proceedings.

SEC. 288. *No expenditure without authority of board; no member to be interested, etc.* No money shall be paid for the erection, rebuilding or repair of any hospital, or of any addition or additions thereto, or for supplies therefor, unless first authorized by said board, and upon a warrant of the proper officer of the corporation, and no member of said board shall be interested, directly or indirectly, in any contract concerning said institution.

SEC. 289. *Plans, specifications, etc.* It shall be the duty of said board, before entering into any contract for the erection of any hospital building, to cause plans, specifications, detailed drawings and forms of bids to be prepared; and when adopted by them they may, at their discretion, cause the said plans and drawings to be lithographed, and the specifications and forms of bids, and a form of contract and bond, to be prepared by the attorney of the corporation, and have the same printed for distribution among the bidders.

SEC. 290. *Terms of contracts, etc.* All contracts shall be made in the name of the corporation, and it shall be stipulated therein that the contractors will not execute any extra work, or make any modifi-

cations or alterations of the work mentioned in the specifications and plans, unless ordered in writing by the board; and that they will not claim any pay for the same unless such written order is given, and the extra price of compensation fixed and agreed upon; and copies of the said plans and drawings, attested by the contractor, and the original bids, specifications and contracts, shall be deposited in the office of the clerk of the corporation.

SEC. 291. *Contracts to be advertised, and given to lowest bidder.* The said board shall not enter into any contract for work or materials, except as relates to procuring plans, drawings, specifications and forms of bids, without first causing thirty days notice to be given in one or more newspapers of general circulation in the corporation, that sealed proposals will be received for doing the work or furnishing the materials; and they shall enter into contract with the lowest bidder, for the whole or any part of the work, upon his giving bond to the corporation, with security to be approved by the board, that he will perform such work or furnish the materials in accordance with his contract.

SEC. 292. *Bids to be accompanied by bond, etc.* All bids shall be accompanied with a bond, signed by sufficient sureties for the acceptance of the contract, if awarded by the board, to fully secure any amount of difference between the amount of such bid and the next higher bid, and such amount shall be collected by the board and paid into the hospital fund in case of refusal by the bidder to enter into contract according to his bid, within such reasonable time as said board may determine.

SEC. 293. *Contract with lowest bidder.* The board shall enter into contract with the lowest responsible bidder upon his giving bond to the corporation, with such surety as the said board shall approve, that he will perform such work and furnish materials in accordance with his contract; and on failure of such bidder, within a reasonable time, to be fixed by said board, to enter into bond with the surety before provided, then a contract may be made with the next lowest responsible bidder, and so on, until a contract is completed by the contractor giving bond as aforesaid.

SEC. 294. *Bids to be sealed, indorsed, etc.* All bids shall be inclosed in a sealed envelope and deposited with the clerk of the board, and such sealed envelope shall have indorsed thereon the nature of the same, and all bids shall be opened at a regular meeting of the board.

SEC. 295. *Board to have management and control of hospitals.* The said board shall have the entire management and control of such hospital when the same has been completed and ready for use, and of the furnishing thereof, subject to the ordinances of the council, and shall establish such rules for its government and the admission of persons to its privileges, as they may deem expedient; and it shall also have power to employ a superintendent, steward, physicians, nurses, and such other employes as they may deem necessary, and fix the compensation of all persons so employed, subject to the approval of the council.

SEC. 296. *Council may enter into agreement with any corpora-*

tion, etc. The council may enter into an agreement with the corporation or association, organized for charitable purposes in such municipal corporation, for the erection and management of a hospital for the sick and disabled, and for a permanent interest therein, to such extent and upon such terms and conditions as may be agreed upon between the council and such corporation or association; and the council shall provide for the payment of the amount agreed upon, for any interest so acquired, either in one payment or installments, or so much, from year to year, as the parties may stipulate.

SEC. 297. *Applicability to existing hospitals.* The provisions of this chapter shall, so far as applicable, govern hospitals heretofore established and erected.

CHAPTER XXII.

INFIRMARIES.[1]

SECTION.		SECTION.	
298.	Board of infirmary directors.	301.	Their care for the inmates, separation of sexes, etc.
299.	Their election, term and compensation.	302.	Overseers of the poor to be appointed.
300.	To be governed by regulations applicable to hospitals.		

SEC. 298. *Board of infirmary directors.* The management of affairs of all corporation infirmaries now existing, or which may hereafter be established, and the care of the inmates thereof; the erection and enlargement of all infirmary buildings, and of all additions thereto; and the repair and furnishing thereof, and improvement of the grounds therewith connected; and the granting of outdoor relief to the poor, shall be vested in a board of three directors, which shall be called "The Board of Infirmary Directors."

SEC. 299. *Their election, term and compensation.* The said directors shall be electors and be elected by the qualified voters of the corporation, and shall hold their office for three years, except that at the first election one of the said directors shall be chosen to serve for one year, one for two years, and one for three years, and thereafter one shall be elected annually. They shall not receive any compensation for their services; provided, that in cities of the first class, having a population of over one hundred thousand inhabitants, such directors shall receive such compensation as the city council may by ordinance provide.

SEC. 300. *To be governed by regulations applicable to hospitals.* In the management of any infirmary, in the care and treatment of the

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[1] Act of 1852, § 77, as amended April 29, 1854 (4 Curwen, ch. 1470); Act of April 8, 1856 (4 Curwen, ch. 1572); Act of March 1, 1861 (58 O. L. 25.)

Where a member of the board of directors of a county infirmary was, by said board, appointed to the office of superintendent of the County Infirmary, he still continuing to hold the office of director: *Held*, that the duties of the two offices are incompatible, and can not be legally held by the same person at the same time, and such appointment was, therefore, illegal and void. *Louthan* v. *Taylor*, 12 O. S. 130.

inmates thereof, in the erection, enlargement or repair of any building for infirmary purposes, or of any addition or additions thereto, the said directors shall have the same powers, be governed by the same regulations, and perform the same duties, so far as applicable, as are vested in and imposed on the commissioners of hospitals, as provided in chapter twenty-one; and the power of the council in relation to such infirmaries, and the conduct of the directors thereof, shall be the same, so far as applicable, as provided in said chapter in relation to hospitals.

SEC. 301. *Their care for the inmates, separation of sexes, etc.* The said directors shall further see that the inmates of such infirmary are comfortably provided for and kindly treated, and they may, whenever deemed necessary, provide for the care and support of the males and females in separate buildings, or in separate departments of the same building.

SEC. 302. *Overseers of the poor to be appointed.* The council shall provide, by ordinance, for the appointment by the mayor, subject to the approval of the council, of such number of persons as may be deemed necessary, not to exceed one in each ward, to act as overseers of the poor, and shall prescribe the duties of such persons in relation to the care of the poor, and their removal when necessary, to the infirmary, but such persons shall not receive any compensation for their services.

CHAPTER XXIII.

BOARD OF HEALTH.[1]

SECTION.
303. Board of health.
304. Term of office of members.
305. May appoint health officer, clerk, etc.
306. Powers and duties of board.
307. May restrain persons infected, etc.
308. Punishment of infected person for escaping, etc.
309. Regulations to secure public health.
310. Duties as to brothels.
311. Disposition of minor prostitutes.
312. Where female shall be treated as a vagrant.
313. Treatment of diseased female; expense thereof.
314. Suit for recovery of such expense.
SECTION.
315. Nuisances to be abated.
316. Temporary suspension of order of abatement.
317. Modification or reaffirmation of order.
318. Sanitary police to be assigned.
319. When such police shall be dismissed.
320. Vaccination to be encouraged and provided for.
321. Sanitary report; its contents, etc.
322. Penalty for violation of order of board of health.
323. Violation by a corporation.
324. Prosecutions, how instituted.
325. Provision for expenses of board of health.

SEC. 303. *Board of health.* Whenever the council of any city or incorporated village shall establish a board of health, such board shall

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[1] Act of 1852, § 62, as amended May 1, 1854 (4 Curwen, ch. 1506); March 29, 1867 (64 O. L. 76); April 13, 1867 (64 O. L. 147); April 16, 1867 (64 O. L. 242.)

An application for a restraining order alleged, that plaintiffs were engaged in the business of slaughtering hogs at their houses in Cincinnati; that they received large droves from railroads and steamboats and drove them through the city to their slaughtering houses; that it habitually happened, from overloading on the cars and other casualties, that one or

be composed of the mayor, who shall be president by virtue of his office, and six members, to be appointed by the council, who shall serve without compensation, and a majority of whom shall be a quorum.

SEC. 304. *Term of office of members.* The term of office of the

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more of the animals were received dead; that it had been the custom of plaintiffs to receive such animals, when recently deceased, before they had become offensive, and transport them on drays through the streets to their tanks, where they were rendered by the aid of steam into lard, yielding a profitable result; that the city had contracted with T. to remove all the dead animals from her limits beyond the boundary of the corporation, securing a monopoly of collecting together and removing all offensive animal and vegetable substances; that under this authority said T. assumed to take into his possession the carcass of every animal found dead in the streets, without permitting the owners to use and appropriate the same in their ordinary business, and that the city police aided him in so doing; that the ordinance under which the city council had granted these rights to defendant also prohibited all persons from removing or carrying in or through the public streets the carcass of a dead animal without a permit from the president of the board of health, prescribing the conditions of removal.

"The only practical question is this," said Storer, J.: "Has the city council exceeded its powers, either in enacting the ordinances, or in entering into the contract with the defendant, T.?"

"By the 62d section of the law of 1852, by which cities of the first class are empowered to legislate, express authority is granted to the city council to make all needful regulations to promote the public health and prevent the prevalence of disease. The means to reach that end must be left to the wise discretion of the body which enacts the by-law." * * *

"The ordinance rests upon the assertion, which is sustained by all experience, and of which the court is bound to take notice, that animals dying of disease, or smothered on board of a boat, or found dead in a railroad car, whether from exhaustion or exposure to the cold or heat, are unfit for food, and, therefore, the acts mentioned in the ordinance may well be prohibited, more especially as the law of the state forbids the offering for sale of all such animal substance in the public markets." * * * "Comparing the contract of T. with the ordinance, the court does not perceive that any fair or reasonable construction can lead to the conclusion that they are beyond the corporate power of the city officials, or in derogation of private right."

"The owner, it must be admitted, may claim a permit from the board of health to convey his property beyond the city boundary; but he can not and ought not to be allowed to manufacture, within the city, the carcass into any other substance; and there is provision in the contract for remuneration to the owner if he is not disposed to remove the carcass himself." Injunction refused. *Morgan* v. *Thompson*, Superior Court of Cincinnati. MS.

Morgan was subsequently fined in the police court for removing and carrying through the streets of said city the carcasses of three hogs, without having procured from the president of the board of health a permit so to do, contrary to the ordinance passed June 15, 1866.

On certiorari from the court of common pleas, Murdock, J., *Held*, that it was not only the right, but it was the duty of the city council to provide for the health of the public of the city, and that the ordinance was within the scope of their powers; that the ordinance requiring any person removing the carcasses of dead animals to get a permit from the president of the board of health was reasonable, and therefore legal; and that the plaintiff in certiorari, carrying carcasses of dead animals through the streets without such permit, was properly fined, no matter what reason the said president may have given for the refusal of the permit.

members of such board shall be three years from the date of appointment, except that those first appointed shall be classified as follows: Two to serve for three years, two for two years, and two for one year, and thereafter two shall be appointed annually.

SEC. 305. *May appoint health officer, clerk, etc.* Such board shall have power to appoint a health officer, a clerk, as many ward or district physicians as they may deem necessary for the care of the sick poor, and such other persons as may be in need, and to define their duties and salaries; and all such appointees shall serve during the pleasure of the board.

SEC. 306. *Powers and duties of board.* The council may grant such board power to abate and remove all nuisances in the corporation, and assess the costs and expense of the same upon the property situate therein; which assessment, when duly certified by the president of the board to the county auditor, shall become a lien, to be collected the same as any other tax in favor of the corporation, and to compel the proprietors or owners, agents or assignees, occupants or tenants of the lot or property, house or building, upon or in which any nuisance may be, to abate and remove the same; to regulate the construction and arrangement of all water-closets and privy-vaults, and the emptying and cleaning of such vaults; to create a complete and accurate system of registration of births, deaths and interments, occurring in or near such corporation, for purposes of legal and genealogical investigations, and to furnish facts for statistical, scientific, and particularly for sanitary inquiries; and when complaint is made, or a reasonable belief exists that an infectious or contagious disease prevails in any locality or house, to visit such locality or house, make all necessary investigation by inspection, and on discovering that such infectious or contagious diseases exist, to send the person or persons so diseased to the pest-house or hospital.

SEC. 307. *May restrain persons infected, etc.* When any person is found afflicted with infectious or contagious disease, and is removed to a pest-house or hospital, the board of health is empowered to use all necessary means to restrain such patient of his or her liberty until the danger of infection or contagion from said disease shall have ceased.

SEC. 308. *Punishment of infected person for escaping, etc.* If any person so removed to any pest-house or hospital, shall willfully leave or escape therefrom before the physician of such pest-house or hospital shall give a certificate of restored health, the person so offending shall, upon conviction thereof before the mayor or police judge, be fined in any sum not less than five nor more than fifty dollars, or be imprisoned not less than one nor more than ten days, as the mayor or judge may determine.

SEC. 309. *Regulations to secure public health.* The council may grant power to such board to make and pass all such orders and regulations as they shall, from time to time, deem necessary and proper for the public health and for the prevention of diseases; and such

orders and regulations, when adopted, shall have all the force and effect of ordinances of such corporation.

SEC. 310. *Duties as to brothels.* The board of health in cities of the first class, and, whenever required by resolution of the council, in cities of the second class, are authorized and directed to enter brothels and houses of assignation, and make enumerations, as often as they may deem necessary, of the female inmates therein, and make a record of the same, and of the age of such female inmates, in a book to be kept in the office of said board of health, to be open to the inspection of the members of the board, the police and others.

SEC. 311. *Disposition of minor prostitutes.* When any female under the age of eighteen years, or believed to be under that age, is found in such brothel or house of assignation, it shall be the duty of the board of health to return such female to her home, if she have any, and if such female have no home, then she shall be consigned to the house of refuge and correction of the corporation, or such benevolent association established for the reformation of abandoned females, as the board of health may select.

SEC. 312. *Where female shall be treated as a vagrant.* No female shall be consigned to a house of refuge and correction, or benevolent institution, against her will; but in case she declines the care and protection tendered her, it shall be the duty of the board to turn said female over to the mayor or police court to be tried as a vagrant.

SEC. 313. *Treatment of diseased female—expense thereof.* Whenever any female is found, in any house of ill-fame or assignation, affected with contagious or infectious disease, and is removed to, or if such person shall apply for admission to, any hospital or pest-house for treatment, the costs of such removal, and the expense of boarding and washing, while in such hospital or pest-house, shall be paid by the proprietor or proprietors of the house of ill-fame or assignation from which such patient was removed, or in which she was last an inmate; and such payment shall be made before such patient is discharged from such hospital or pest-house; and such expense of boarding, washing and medical attendance shall be a lien upon the house and premises in which such female shall have been so found, which lien may be enforced as other liens for the security of money.

SEC. 314. *Suit for recovery of such expense.* If the proprietor or proprietors of such house of ill-fame or assignation shall fail or refuse to pay such expense, legal proceedings shall be immediately instituted against such proprietor or proprietors of such house of ill-fame or assignation, and such patient shall be held as a witness in the case.

SEC. 315. *Nuisances to be abated.* Whenever any building, erection, excavation, premises, business, pursuit, matter or thing, or the sewerage, drainage or ventilation thereof, in the opinion of said board of health, whether in whole or in part, be in a condition or in effect dangerous to life or health, the said board may declare the same, to the extent it may specify, a public nuisance, or dangerous to life and health; and the said board may order the same to be removed, abated, suspended, altered, or otherwise improved or purified, as said

order shall specify, and shall cause said order, before its execution, to be served on the agent, owner, occupant or tenant, or such of them as are in the corporation and can be found.

SEC. 316. *Temporary suspension of order of abatement.* If any party so served shall, before the execution of the order is commenced, apply to said board to have said order or its execution stayed or modified, it shall be the duty of the board to temporarily suspend or modify said order, and to give such party or parties, as the case, in the opinion of the board, may require, a reasonable and fair opportunity to be heard before said board, and to present proofs and facts against said declaration and the execution of said order, or in favor of its modification.

SEC. 317. *Modification or reaffirmation of order.* The board shall enter upon its minutes such facts and proofs as it may receive, and its proceedings on such hearing, and thereafter may rescind, modify or reaffirm its said declaration and order, and require execution of said original, or of a new or modified order to be made, in such form and effect as it may finally determine.

SEC. 318. *Sanitary police to be assigned.* The mayor shall have power, and it shall be his duty to detail a portion of the regular police force of the corporation for sanitary duty, or to make new appointments for that purpose, whenever in the opinion of the board the public health and sanitary condition of the corporation may require. And such policemen, when so detailed, or when appointed, shall be known as the "Sanitary Police;" the number comprising the said sanitary police to be determined by the board of health, according to the exigencies of the case; and said sanitary police shall be subject to the exclusive direction and control of said board for the enforcement of proper sanitary measures, and for the promotion of the public health.

SEC. 319. *When such police shall be dismissed.* Whenever, in the opinion of the board of health, the services of the sanitary police are no longer required, they shall, on recommendation of the board of health, be returned to duty as regular policemen, or be dismissed, as the mayor may direct.

SEC. 320. *Vaccination to be encouraged and provided for.* Said board may take measures and supply agents, and afford inducements and facilities for gratuitous vaccination and disinfection; and may afford medical relief to and among the poor of the corporation, as in its opinion the protection of the public health may require; and during the prevalence of any epidemic disease, may provide temporary hospitals for such purposes.

SEC. 321. *Sanitary report—its contents, etc.* It shall be the duty of said board, on or before the first Monday of March in each year, to make a report, in writing, to the council of the corporation, upon the sanitary condition and prospects thereof; and such report shall set forth generally the statistics of deaths, the action of said board and of its officers and agents, and the names thereof for the past year; and may contain other useful information, and shall suggest any further

legislative action deemed proper for the better protection of life and health.

SEC. 322. *Penalty for violation of order of board of health.* Any person violating any provision of this chapter, or any order of the board of health made in pursuance thereof, or obstructing or interfering with the execution of any such order, or willfully and illegally omitting to obey any such order, shall, on conviction, be fined in any sum not exceeding one hundred dollars, or imprisoned for any time not exceeding ninety days, or both, at the discretion of the court; but no person shall be imprisoned under this section for the first offense.

SEC. 323. *Violation by a corporation.* If such violation, obstruction, interference or omission be by a corporation, such corporation shall forfeit and pay to the proper city or village, any sum not exceeding one hundred dollars, at the discretion of the court, to be collected in civil action brought in the name of such city or village; and any officer of such corporation consenting thereto, shall be subject to imprisonment as above provided.

SEC. 324. *Prosecutions, how instituted.* Prosecutions and the civil action provided for in section three hundred and twenty-three under this chapter, shall be instituted before any tribunal within the municipal corporation having jurisdiction thereof.

SEC. 325. *Provision for expense of board of health.* Where expenses shall be incurred by the board of health, under the provisions of this act, it shall be the duty of the council, upon application and certificate from said board of health, to pass the necessary appropriating ordinances to pay the expenses so incurred and certified.

CHAPTER XXIV.

FIRE DEPARTMENT.[1]

SECTION.		SECTION.	
326.	Council shall have power to establish fire department.	330.	To invest fire-engineer with power, etc.
327.	To purchase fire-engines, etc.	331.	Engineer may administer oaths, etc.
328.	To erect necessary buildings, etc.	332.	His compensation.
329.	To regulate the erection of structures, etc.	333.	Council may prohibit erection of wooden buildings, etc.

SEC. 326. *Council shall have power to establish fire department.* The council of any city or incorporated village shall have power to establish all necessary regulations to guard against the occurrence of fires, and protect the property and lives of the citizens against damage and accidents resulting therefrom; and for this purpose to establish and maintain a fire department, and provide for the establishment and organization of fire-engine and hose companies, and provide such by-laws and regulations for the government of such companies as may be deemed necessary and proper.

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[1] Act of 1852, § 21, as amended May 5, 1868; 65 O. L. 147.

Sec. 327. *To purchase fire-engines, etc.* The council shall also have power to purchase for its own use, or for the use of such companies, all necessary fire-engines (either steam or hand), hose carriages and hose, and all such other apparatus and instruments as shall be deemed necessary to the extinguishment of fires, and to establish lines of fire-alarm telegraph within the limits of the corporation.

Sec. 328. *To erect necessary buildings, etc.* The council shall also have power to provide or erect all necessary and suitable buildings containing rooms for fire-engines, hose-carriages, fire apparatus and instruments, and for the meetings of the fire and hose companies.

Sec. 329. *To regulate the erection of structures, etc.* The council shall have power to regulate the erection of houses and business structures, and, on the petition of the owners of not less than two-thirds of the ground included in any square, to prohibit the erection on any such square of any building, or of any addition to any building more than ten feet high, unless the outer walls be made of brick and mortar, or of stone and mortar, or of iron, or stone or brick and mortar, and to provide for the removal of any buildings or additions erected contrary to such prohibition.

Sec. 330. *To invest fire-engineer with power, etc.* The council shall have power to invest the fire-engineer, or any other officer of the fire or police department, with the power, and impose on him the duty, to be present at all fires, investigate the cause thereof, examine witnesses and papers, and compel the appearance and production of the same, and to do and perform all such other acts as may be necessary to the effective discharge of such duties.

Sec. 331. *Engineer may administer oaths, etc.* Such officer shall have power to administer oaths, make arrests, and enter any building for the purpose of examination, which, in his opinion, is in danger from fire; and he shall report his proceedings to the council at such times as may be required.

Sec. 332. *His compensation.* For his services herein specified, such fire-engineer or other officer shall receive such compensation as the council may prescribe.

Sec. 333. *Council may prohibit the erection of wooden buildings, etc.* In all cities of the first class, the council shall have power to prohibit, within such limits as may be deemed proper, the erection of any building, unless the outer walls thereof be constructed of iron, brick and mortar, or stone and brick and mortar.

CHAPTER XXV.

WATER-WORKS.[1]

SECTION.
334. Council may construct and regulate water-works.
335. Trustees of water-works.
336. Their salary and duties.
337. By-laws, etc.
338. Water rents.
339. Disposition of surplus.
340. Monthly reports and weekly deposits.
341. Money to be kept as a distinct fund.
342. Trustees to make contracts, etc.
343. Annual investigation.
344. No charge for water to extinguish fires, etc.
345. Protection of attachments, etc.
346. Rules as to contracts.
347. Contractors must give bond, etc.

SECTION.
348. Extension of aqueducts, etc., beyond corporation limits.
349. Construction and regulation thereof.
350. Water-works in contiguous cities or villages.
351. Construction and regulation thereof.
352. Contracts to supply contignous cities or villages.
353. Cost thereof, how raised.
354. Works to be joint property, etc.
355. Termination of contract upon annexation.
356. Tax to be levied for payment of interest.
357. Payment of interest on loans.
358. Tax to be a lien upon property.
359. Laying of water-pipes in highways.
360. Extent of jurisdiction.

SEC. 334. *Council may construct and regulate water-works.* The council of any city or incorporated village shall have power to enter upon and take possession of any land obtained for the construction or extension of water-works, reservoirs, or the laying down of pipe, and also any water rights or easements connected with the use of water; and any land, water right or easement so taken possession of for water-works purposes, shall not be used for any other purpose, except by authority of the trustees and consent of the council.

SEC. 335. *Trustees of water-works.* The council of any city or incorporated village in which water-works are or may be situated, or in progress of construction, shall establish a board of three trustees, to be known as the Trustees of Water-Works, who shall be elected by the qualified electors of the corporation, and hold their office for the term of three years, except that, at the first election under this act, one shall be chosen for one year, one for two years, and one for three years; and thereafter one of the trustees shall be elected annually.

SEC. 336. *Their salary and duties.* Said trustees shall receive a fixed salary, to be determined by the council, and they shall manage, conduct and control the works, furnish supplies of water, collect water rents, and appoint all necessary officers and agents, and determine the term of office and the amount of the salaries of the officers and agents so appointed.

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1 Act of March 11, 1853, as amended March 28, 1859 (4 Curwen, ch. 1978); March 5, 1856 (4 Curwen, ch. 1541); May 1, 1854 (4 Curwen, ch. 1475); March 26, 1860 (4 Curwen, ch. 2105); March 25, 1863 (60 O. L. 44); April 5, 1866 (63 O. L. 144); January 26, 1867 (64 O. L. 8); April 6, 1865 (62 O. L. 86); March 11, 1867 (64 O. L. 50); February 15, 1868 (65 O. L. 9); April 3, 1868 (65 O. L. 77); Act of 1852, § 22.

Under the Act of March 11, 1853, § 6, it was held, that "where a city has no water-works situate therein, and has done no more than to authorize the borrowing of money for the purpose of constructing water-works, an ordinance establishing a board of trustees of water-works is premature and unwarranted, and such board may be legally abolished by the repeal of such ordinance. *State ex rel Waddle* v. *City Clerk of Chillicothe*, 7 O. S. 355.

Sec. 337. *By-laws, etc.* Said trustees shall be authorized to make such by-laws and regulations as they may deem necessary for the safe, economical and effieient management and protection of the water-works, and such by-laws and regulations shall have the same validity as ordinances, when not repugnant thereto, or to the constitution and laws of the state.

Sec. 338. *Water rents.* For the purpose of paying the expenses of conducting and managing water-works, the trustees of water-works shall have power to assess and collect, from time to time, a water rent of sufficient amount, in such manner as they may deem most equitable, upon all tenements and premises supplied with water.

Sec. 339. *Disposition of surplus.* Should there be any surplus, after paying the expenses of conducting and managing the water-works, the same may be applied to the repair, enlargement or extension of the works, or of the reservoirs, the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt; and the amount authorized to be levied and assessed for water-works purposes, shall be applied by the council to the creation of a sinking fund for the payment of the indebtedness incurred for the construction and extension of water-works, and for no other purpose whatever.

Sec. 340. *Monthly reports, and weekly deposits.* Said trustees shall make monthly reports to the council of the receipts and disbursements of money belonging to the water-works, and an annual report of the condition of the same, which report the council may cause to be published in some newspaper of general circulation in the corporation; and all money collected for water-works purposes they shall cause to be deposited weekly, by the collectors thereof, with the treasurer of the corporation, and the receipt therefor shall be by such collectors deposited with said trustees or their authorized agent.

Sec. 341. *Money to be kept as a distinct fund.* All money so deposited shall be kept a separate and distinct fund, subject to the order of said trustees; and all orders drawn by said trustees on the treasurer of the corporation, shall be signed by one of the trustees, and countersigned by the clerk of the water-works.

Sec. 342. *Trustees to make contracts, etc.* The said trustees shall be authorized to make contracts for the building of machinery, water-works buildings, reservoirs, and the enlargement and repair thereof, and the manufacture and laying down of pipe, and for all other necessary purposes to the full and effieient management and construction of water-works.

Sec. 343. *Annual investigation.* The council of any corporation, in which water-works are or may be situated, or in progress of construction, shall be authorized to appoint a committee for the investigation of all books and papers, together with all matters pertaining to the management of the water-works, at least once a year, and oftener if necessary by reason of any neglect of duty, or malfeasance on the part of any officer of the works; and any officer of the works,

found by said committee so offending, shall be liable to removal from office by the council.

Sec. 344. *No charge for water to extinguish fires, etc.* No charge shall be made by the trustees of water-works for supplying water for the extinguishing of fires, or cleaning of fire apparatus, or the cleaning of market-houses, or for the use of any of the public buildings belonging to the corporation.

Sec. 345. *Protection of attachments, etc.* All attachments of whatever nature made to the water-pipes, or other fixtures belonging to the water-works, and intended for public use, shall be subject to the same supervision, rules and regulations, as are made for the protection of water-works against abuse, destruction, and inordinate or unnecessary use or waste of water, or the trustees may make general or special rules and regulations for such purpose.

Sec. 346. *Rules as to contracts.* Said trustees, before entering into any contract for work to be done, the estimated cost of which shall exceed five hundred dollars, shall cause at least two weeks notice to be given, in one or more daily newspapers of general circulation in the corporation, that proposals will be received by said trustees, for the performing of the work specified in said notice; and the trustees shall contract with the lowest bidder, if, in their opinion, said lowest bidder can be depended on to do the work with ability, promptness and fidelity, and if such be not the case, said trustees may give the contract to the next lowest bidder, or decline to contract, and advertise again.

Sec. 347. *Contractors must give bond, etc.* Said trustees shall require bond to be given, with good and sufficient security, for the faithful performance of the work; but no member of said board of trustees shall be such security; nor shall any trustee be a contractor, or in any-wise, either directly or indirectly, interested in any such work to be contracted for; provided, that in case of emergency, the council may, by a vote of two-thirds of all the members elected, authorize said trustees to enter into such contracts without advertising.

Sec. 348. *Extension of aqueducts, etc., beyond corporation limits.* The council of any corporation owning water-works, may, on the written request of any number of citizens living outside of the limits thereof, extend, construct, lay down, and maintain aqueducts and water-pipes to any distance outside of the corporation limits, not exceeding three miles, and for this purpose shall have the right to make use of such of the public streets, roads, alleys and public grounds, as shall be necessary therefor.

Sec. 349. *Construction and regulation thereof.* Such aqueducts and pipes shall be so constructed and laid as not to interfere unnecessarily with the use of such streets, roads, alleys, and public grounds, as public highways and public grounds; and the corporation so extending and establishing any part of its water-works outside of its limits, shall have the same power and jurisdiction to prevent or punish any pollution of, or injury to the water so conveyed, or any injury

to the works, or any portion thereof, as they may have within the limits of the corporation.

Sec. 350. *Water-works in contiguous cities or villages.* Any city or incorporated village owning water-works, whose territory is contiguous to that of another city or incorporated village, may, with the assent of such other city or incorporated village, establish and maintain such portion of its water-works as it shall deem advisable, within the limits of such other city or incorporated village, and shall have the right to make use of such of the public streets, alleys and public grounds of such other city or incorporated village as shall be necessary therefor, for the purpose of constructing, laying down, and maintaining all such aqueducts and water-pipes as shall be required in connection with such water-works, for the conveyance of water along and across such streets, alleys and public grounds.[1]

Sec. 351. *Construction and regulation thereof.* Such aqueducts and pipes shall be so constructed and laid as not to interfere unnecessarily with the use of such streets, alleys and public grounds, as public highways and public grounds; and the city or incorporated village so establishing any part of its water-works within the limits of such other city or incorporated village, shall have jurisdiction to prevent or punish any pollution of, or injury to the water so conveyed, or of the stream or source from which the same shall be obtained, or any injury to any portion of said water-works so located within the limits of such other city or incorporated village.

Sec. 352. *Contracts to supply contiguous cities or villages.* Any city or incorporated village which shall have established, or shall be about to establish water-works, is hereby authorized to enter into a contract with any contiguous city or incorporated village, for the supply of the latter with water, upon such terms as shall be mutually agreed upon by the board of trustees of water-works of the respective cities, or of the city and incorporated village, or of the incorporated villages.

Sec. 353. *Cost thereof, how raised.* The amount to be paid for such supply, shall be raised by such city or incorporated village, in the manner provided for the payment of the expense of conducting and managing water-works constructed wholly by a city or incorporated village; and the amount so received by the city or incorporated

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[1] The city of Cincinnati made a contract with the city of Covington to supply it with water from the Cincinnati water-works. Plaintiffs—citizens of Cincinnati, tax-payers, and water consumers—asked for an injunction to restrain the performance of the contract. *Held*, per Force, J., that the act of 1854, authorizing any city having water-works to enter into a contract with any contiguous city, or incorporated village, for the supply of the latter with water upon such terms as shall be mutually agreed upon by the boards of trustees of water-works of the respective cities, etc., was descriptive of and applied only to municipal corporations within the State of Ohio; and that, neither in the general authority to establish and manage water-works, nor in the inherent powers of a municipal corporation, was the power to be found authorizing the city of Cincinnati to make the contract. Injunction allowed. *Kleiner Bro.'s* v. *City and Trustees of Water-works.* Ham. Com. Pleas. MS.

village furnishing such supply, shall be applied to the payment of the interest on the sum borrowed for the construction of such water-works, or to defray the expense of their management, as the board of trustees for water-works shall direct.

SEC. 354. *Works to be joint property, etc.* Upon the annexation of one municipal corporation to another municipal corporation, the water-works theretofore constructed by either corporation, shall thereby become the joint property of the united corporation, and shall thereafter be managed by the board of trustees of the corporation to which such annexation shall have been made.

SEC. 355. *Termination of contract upon annexation.* Any contract entered into, by one municipal corporation, for the supply of water to the other, as above provided, shall be terminated by such annexation; and so much of the debt incurred by either, in the construction of water-works, as remains unpaid, shall thereafter be a charge upon the united corporation, to the same extent that the separate debt of either, incurred as aforesaid, was, before such union, a charge upon the corporation which constructed the same.

SEC. 356. *Tax to be levied for payment of interest.* For the purpose of paying the interest on the money borrowed for the erection and completion of water-works, during the erection and completion thereof, and before they shall have been put in operation, a tax of sufficient amount shall be assessed and collected each and every year, in the usual manner of levying and collecting taxes in the corporation, upon all the taxable property thereof.

SEC. 357. *Payment of interest on loans.* For the purpose of paying the interest on any loan which any city or incorporated village may have heretofore made, or may hereafter make, for the erection or extension of water-works, and after they shall have been put in operation, and for the building of machinery, a tax of sufficient amount may be assessed and collected by the council in each and every year, in such manner as the council may deem most equitable and proper, as may be directed by ordinance, upon all the taxable property adjoining, abutting to, or bounding upon any street, lane, alley, public ground, square, block or premises through which water-pipe has been laid.

SEC. 358. *Tax to be a lien upon property.* The said tax, when levied and assessed, shall be a lien upon the property upon which the same is levied, and a charge against the owners thereof, and shall be certified to the auditor of the county, and be placed upon the county duplicate in a separate column thereof, and be collected as other taxes, and the same shall be paid to and be under the control of the trustees of the water-works.

SEC. 359. *Laying of water-pipes in highways.* The council may prescribe, by ordinance, for the laying down of water-pipes in all highways about to be paved, macadamized, or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in which the same are laid; but in no case, excepting as a sani-

tary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curbstone.

SEC. 360. *Extent of jurisdiction.* The jurisdiction of any corporation owning water-works, to prevent or punish any pollution of the water, shall extend five miles beyond the corporation limits.

CHAPTER XXVI.

PUBLIC CEMETERIES AND BURIAL-GROUNDS.[1]

SECTION.
361. Cemeteries to be provided.
362. Title to be vested in corporation.
363. Board of trustees to be elected.
364. Their term of office, etc.
365. Vacancies, how filled.
366. Duties of trustees.
367. Their powers.
368. May institute suits, etc.
369. Shall make by-laws, etc.
370. Shall fix price of lots and terms of payment.
371. Price of lots limited.
372. Sale of lots, etc.
373. Clerk, and quarterly report.
374. Annual report to council.
375. Statement as to funds, etc.
376. Enlargement of grounds.
377. Union of cities, etc., for cemetery purposes.
378. How appropriations shall be made.
379. Titles, how vested.
380. Expenses, etc., to be pro rata.

SECTION.
381. Control and management.
382. Power to enforce ordinances, etc.
383. Discrimination forbidden.
384. Joint meeting of council and trustees.
385. Joint meeting to make rules, etc.
386. Vote, and record thereof.
387. Public burial-grounds may be appropriated.
388. Purchase of lands, improvements, etc.
389. Rights and titles inviolate.
390. Adjoining townships may be admitted to participation, etc.
391. Clerk shall record plat of grounds, etc.
392. Power of council over burial-grounds, etc.
393. Burials may be prohibited within corporation limits.
394. Power limited as to villages.
395. Bond may be required of disbursing trustee.
396. Applicability to existing cemeteries.

SEC. 361. *Cemeteries to be provided.* The council shall have power to provide, without the limits of the corporation, places for the interment of the dead.

SEC. 362. *Title to be vested in corporation.* The title to, and right of possession of all public grave-yards and burial-grounds located within any city or incorporated village, which have been set apart and dedicated as public grave-yards or burial-grounds, and grounds which have been used as such by the public but not dedicated, except such as may be owned or under the care of any religious or benevolent society, or any incorporated company or association, shall be and the same are hereby vested in the corporation where such public grave-yard or public burial-ground is located.

SEC. 363. *Board of trustees to be elected.* The qualified electors

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[1] Act of 1852, § 23, as amended March 31, 1859 (4 Curwen, ch. 1987); Act of April 3, 1867 (64 O. L. 102); March 8, 1865 (62 O. L. 38); April 8, 1865 (62 O. L. 101); March 29, 1867 (64 O. L. 70); April 5, 1867 (64 O. L. 110); April 16, 1867 (64 O. L. 203); March 20, 1868 (65 O. L. 32); April 3, 1868 (65 O. L. 52); May 16, 1868 (65 O. L. 212, 213); April 16, 1867 (64 O. L. 244); March 17, 1860 (4 Curwen, ch. 2095, 2096.)

Burial-ground lots in cities are subject to assessment for street improvement—the supreme court having decided that an assessment for such purpose is not within the purview of that clause of the constitution exempting them from taxation. Collins, J., in *Reiner* v. *Gest*, Ham. Com. Pleas. MS.

of any city or incorporated village, in which there shall be such grounds, or which shall now or may hereafter, by purchase or otherwise, own a public cemetery or burial-ground, shall elect, at the annual election for corporation officers, a board of three trustees, each of whom shall be qualified freehold electors of the corporation, who shall be known as the Trustees of Cemeteries.

Sec. 364. *Their term of office, etc.* Such trustees shall serve without compensation, and they shall hold their office for three years, and until their successors are elected and qualified, except that at the first election under this act, one of said trustees shall be elected for one year, one for two years, and one for three years, and thereafter one shall be elected annually, and a majority shall constitute a quorum.

Sec. 365. *Vacancies, how filled.* All vacancies which may occur in said board, shall be filled by appointment of the council, and the person so appointed shall hold his office until the next regular election; and the council shall have power to remove any trustee for inattention to his duties, want of proper judgment, skill or taste for the due discharge of the duties required of him, or other good cause.

Sec. 366. *Duties of trustees.* Said trustees shall take possession and charge, and have the entire management, control and regulation of all public grave-yards, burial-grounds and cemeteries located in or belonging to the corporation, subject to its ordinances, and they shall direct, whenever they may deem it necessary, the laying out of such grounds and cemeteries, into lots, avenues, walks and paths, or other subdivisions, which lots shall be numbered, and the avenues named, and a plat thereof made so as to exhibit a fair and distinct outline of the grounds; and the same shall be kept in the office of the clerk of the corporation for the use of the public.

Sec. 367. *Their powers.* Said trustees shall have power to direct all the improvements and embellishments of the grounds and lots, and shall protect and preserve the same, and to appoint, subject to the approval of the council, all necessary superintendents, employes and agents, and determine their term of office and the amount of their compensation.

Sec. 368. *May institute suits, etc.* Said trustees are authorized and required, when necessary, to institute suits in the name of the corporation, to recover the possession of all such grounds, remove trespassers therefrom and recover damages for injuries thereto, or to any tombstone or monument therein, and they shall see that all laws and ordinances passed for the protection of public burial-grounds and cemeteries, and the burial of the dead, are enforced.

Sec. 369. *Shall make by-laws, etc.* Said trustees shall make all such by-laws and regulations, not inconsistent with the ordinances of the corporation and the constitution and laws of the state, as they shall deem useful and necessary for the management and protection of all such burial-grounds and cemeteries, and the burial of the dead therein; and such by-laws and regulations shall have the same validity as the ordinances of the corporation, and they shall perform all

such other duties pertaining to their office as the council of the corporation may, by ordinance, prescribe.

Sec. 370. *Shall fix price of lots and terms of payment.* Said trustees shall determine the size and price of lots, and terms of payment therefor, and shall give to each purchaser a receipt, showing the amount paid and a pertinent description of the lot or lots sold; and upon producing such receipt to the proper officer, such purchaser shall be entitled to a deed for the lot or lots described therein.

Sec. 371. *Price of lots limited.* No more shall be charged for lots than shall be necessary to keep in order and embellish the grounds; and provision shall be made for the interment in such cemetery, of all persons buried at the expense of the corporation.

Sec. 372. *Sale of lots, etc.* Said trustees shall have the entire charge and control of the receipts arising from the sale of lots, and of the laying-off and embellishing the grounds; and they may appoint one of their number to sell lots, receive payment therefor, direct the improvements, and make the expenditures under such rules and orders as they shall prescribe, but notice of such appointment shall, upon being made, be communicated to the council.

Sec. 373. *Clerk, and quarterly report.* Said trustees shall appoint a clerk, and keep an accurate minute of all their proceedings, and report quarterly to the council all the moneys received and disbursed by them as such trustees.

Sec. 374. *Annual report to council.* Said trustees shall, annually, on the first Monday of April, or as soon thereafter as may be practicable, report in writing to the council, the number of lots sold, to whom sold, and the amount received therefor during the year preceding said date, and a detailed statement of the expenditures during the same period, showing the time and purpose of each payment, and to whom made.

Sec. 375. *Statement as to funds, etc.* Such report shall also contain a pertinent statement whether the funds, if any on hand, are invested, and the character of the securities therefor, and such other matters as the trustees may deem expedient or the council may require.

Sec. 376. *Enlargement of grounds.* Whenever, in their judgment, an enlargement of any burial or cemetery grounds has become necessary, or grounds for additional cemeteries should be provided, the trustees shall report the fact to the council, and recommend such action as they may deem most expedient.

Sec. 377. *Union of cities, etc., for cemetery purposes.* It shall be lawful for the council of any city or incorporated village and the trustees of any township adjacent to or in which such city or incorporated village is situated, to unite in the establishment of a cemetery by the purchase or appropriation of land therefor, not exceeding in extent one hundred acres, to be paid for as hereinafter provided.

Sec. 378. *How appropriations shall be made.* When any appropriation of land for such purpose shall be necessary, such appropriation shall be made by the corporation for itself and the township interested therein, and the proceedings therefor shall be the same as

required by this act where the appropriation is to be made for the use of the corporation alone.

SEC. 379. *Titles, how vested.* The title to such cemetery grounds, whether by purchase or otherwise, shall vest in and be held by such corporation in trust for the use of the inhabitants of the corporation and township in common, and provision shall be made for the interment in such cemetery of all persons buried at the expense of the corporation or the township.

SEC. 380. *Expenses, etc., to be pro rata.* The expense of such purchase, or of the proceedings in case of appropriation, and the damages awarded, or both, shall be borne by the corporation and township in proportion to the property of each on the duplicate for taxation, and the amount of bonds issued by each in any case, for such cemetery purposes, shall be in the same proportion, and the percentage of taxation for all such cemetery purposes shall be the same in the corporation and the township.

SEC. 381. *Control and management.* The cemetery so owned in common by the corporation and township, shall be under the control and management of the trustees of cemeteries, and their authority over the same and their duties in relation thereto, shall be the same as where the cemetery is the exclusive property of the corporation.

SEC. 382. *Power to enforce ordinances, etc.* The council of any city or incorporated village owning a cemetery in common with any township as aforesaid, shall have full power and authority to pass and enforce all ordinances necessary to carry into effect the provisions herein contained, and such as may be deemed necessary for the preservation and regulation of such cemetery and the protection thereof, and for the punishment of any person or persons violating the ordinances, rules and regulations relating to such cemetery; and the mayor and police officers of such corporation shall have full and complete jurisdiction and authority to enforce all such ordinances, rules and regulations, as if such cemetery grounds were located within or owned exclusively by the corporation.

SEC. 383. *Discrimination forbidden.* No distinction or discrimination of any kind shall be made by the trustees of such cemetery owned in common, in favor of the corporation and against the township, or in favor of the township and against the corporation, but the affairs of the said cemetery shall in all respects be managed as though the same were owned and governed in the interests of the corporation or the township alone.

SEC. 384. *Joint meeting of council and trustees.* The council of the corporation and the trustees of the township shall have a joint meeting at the council chamber of the corporation, on the day of the first regular meeting of the council in the month of May of each year, for the purpose of determining the rate of tax to be levied upon the taxable property of the corporation and the township for the purposes herein required; and upon the passage of a joint resolution by a majority of the members of the council and the trustees, fixing the rate of taxation, it shall be the duty of the clerk of the corporation to

certify the said rate to the auditor of the county for assessment and collection.

SEC. 385. *Joint meeting to make rules, etc.* The trustees of such township or the council of such corporation may at any time call a joint meeting of the trustees and council, on a reasonable notice given by either, for the purpose of making joint rules and regulations for the government of such cemetery, or changing the same, and making such orders as may be found necessary for the application of the moneys arising from the sale of lots, and from taxes, or otherwise.

SEC. 386. *Votes and record thereof.* In all joint meetings each member of the council and each of the trustees shall have one vote in determining all questions; and the proceedings of all joint meetings shall be recorded by the corporation clerk.

SEC. 387. *Public burial-grounds may be appropriated.* In the establishment of cemeteries as herein provided, any city or incorporated village and any township may make use of any public burial-ground or cemetery ground which may be held by such city, incorporated village or township, and may make use of any land which such city, incorporated village or township may have acquired by dedication, gift or devise for burial purposes.

SEC. 388. *Purchase of lands, improvements, etc.* The council of any city or incorporated village, and the trustees of any township, may purchase of any cemetery association incorporated under existing laws, the lands, lots, and improvements of such cemetery association remaining unsold, for cemetery purposes, and take a conveyance thereof; but the purchase money in such cases shall be applied to the payment of the legal debts of such association, and to the embellishment and preservation of the land purchased, and such other purposes as the trustees of the cemetery may direct.

SEC. 389. *Rights and titles inviolate.* The rights and titles of lot-owners, purchased prior to such sale and conveyance, shall not be questioned; and such lot-owners shall continue to hold and occupy their lots under such rules and regulations as shall be adopted for the government and regulation of such cemetery by the authorities making such purchase.

SEC. 390. *Adjoining townships may be admitted to participation, etc.* Any township adjoining one in which a cemetery may be established by a municipal corporation and township, may, by consent of the trustees of such township and of the council of the corporation, be admitted to an equal participation with the inhabitants thereof in the rights and privileges in said cemetery, upon such terms as may be mutually agreed upon; but the title and control of said cemetery shall continue vested in the corporation as above provided.

SEC. 391. *Clerk shall record plat of grounds, etc.* It shall be the duty of the clerk of the corporation to record, in a book to be provided for that purpose, a plat of all grounds for cemetery purposes laid out into avenues, walks, paths and lots, and he shall execute to the purchasers of lots such conveyance as may be necessary to carry into effect the contracts of sale; and such conveyance shall, at the ex-

pense of the person receiving it, be recorded in a book to be kept for that purpose, by the clerk of the corporation.

SEC. 392. *Power of council over burial-grounds, etc.* The council of any city or incorporated village owning a public burial-ground or cemetery, whether within or without the corporation, shall have full power to pass all ordinances necessary to carry into effect the provisions herein contained, and to regulate such public burial-grounds and cemeteries, the improvement of the same and the burial of the dead therein; to define the tenure and conditions on which lots therein shall be held; to protect such public burial-grounds and cemeteries and all fixtures thereon; and to provide for the punishment of all violations of such ordinances.

SEC. 393. *Burials may be prohibited within corporation limits.* The council may prohibit the interment of the dead within the corporation limits, and, for the purpose of making such prohibition effective, may not only impose proper fines and penalties, but shall also have power to cause any body, interred contrary thereto, to be taken up and buried without the limits of the corporation.

SEC. 394. *Power limited as to villages.* Incorporated villages shall not have the power to prohibit the interment of the dead, in any cemetery in use at the time of the incorporation of such village, except in such portions thereof as may not now be used for such interment.

SEC. 395. *Bond may be required of disbursing trustee.* The council shall have power, in their discretion, to require the trustee who may be authorized to receive and disburse the moneys arising from the sale of lots, or otherwise, to enter into a bond to the corporation, with sufficient sureties, conditioned for the faithful performance of his duty as such trustee, and to pay over all moneys by him received, which shall be filed in the office of the corporation clerk.

SEC. 396. *Applicability to existing cemeteries.* The provisions of this chapter relating to the establishment of cemeteries by municipal corporations and township trustees, shall govern cemeteries already so established, so far as the same may be applicable.

CHAPTER XXVII.

PUBLIC GROUNDS AND PARKS.[1]

SECTION.
397. Appointment of park commissioners.
398. To serve without compensation, etc.
399. Their powers and duties.
400. Police jurisdiction over parks, etc.

SEC. 397. *Appointment of park commissioners.* Whenever the council of any city or incorporated village shall, by resolution, determine to lay out and improve any public grounds or park, it shall be the duty of the mayor to appoint, with the consent of the council, three resident freehold electors of the corporation as commissioners for

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1 Act of March 3, 1860 (4 Curwen, ch. 2068); March 30, 1857 (4 Curwen, ch. 1702.)

that purpose, one of whom shall be appointed to serve for one year, one for two years, and one for three years, and thereafter one commissioner annually to serve for three years.

SEC. 398. *To serve without compensation, etc.* Said commissioners shall constitute a board to be called the "Park Commissioners," and they shall serve without compensation, and in incorporated villages, whenever the council may deem expedient so to declare by resolution, one or more of the said commissioners may be appointed from the members of such council.

SEC. 399. *Their powers and duties.* Said commissioners shall have power to appoint a superintendent and all other necessary employes, and fix their compensation, subject to the approval of the council, and prescribe their duties, and generally they shall have the same powers and perform the same duties, so far as applicable, as are vested in and required to be performed by the trustees of cemeteries as provided in chapter twenty-six.

SEC. 400. *Police jurisdiction over parks, etc.* When such park or public grounds shall be situated without the limits of the city or incorporated village, the council shall have power, and may, by ordinance, extend the police jurisdiction of the corporation owning such park or grounds, over the same, in the same manner and to the same extent as if situated within the limits of the corporation.

CHAPTER XXVIII.

PUBLIC HALLS.[1]

SECTION.		SECTION.	
401.	Councils may erect public halls.	403.	Appointment of superintendent, etc.
402.	Enlargement, etc., of public halls.	404.	Council to have control of halls.

SEC. 401. *Councils may erect public halls.* The council of any city or incorporated village shall have power to erect, enlarge, improve and complete any public hall, which shall be used for the public offices of the corporation, and such public and other purposes as the council may authorize.

SEC. 402. *Enlargement, etc., of public halls.* All the power herein conferred on any council, in relation to the erection, enlargement, improvement and completion of any public hall, shall apply to and be conferred on any council in the erection, enlarging, improving and completing any addition or additions to any public hall, now owned by the corporation, or which may be hereafter erected.

SEC. 403. *Appointment of superintendent, etc.* For the complete execution of the powers in this chapter granted, the council shall have power to appoint a superintendent or architect, or both, and such other persons as may be deemed necessary, and to provide for the making

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[1] Act of March 30, 1868 (65 O. L. 39); April 2, 1866 (63 O. L. 84); April 13, 1867 (64 O. L. 140-143); May 6, 1868 (65 O. L. 162.)

of all necessary contracts, and prescribe rules and regulations for the government of all such employes.

SEC. 404. *Council to have control of halls.* Such hall, when completed, shall be under the control of the council, and the council shall have the same power in relation to the preservation and repair thereof as in its original construction or improvement.

CHAPTER XXIX.

DIVISION INTO WARDS.[1]

SECTION.
405. Boundaries, etc., of wards to be established by ordinance.
406. Publication of notice of ordinance.
407. Wards in annexed territory.
408. Boundaries of wards by streets, alleys, etc.
409. Election of representatives of new wards.
410. Effect of change of wards on members of council.

SEC. 405. *Boundaries, etc., of wards to be established by ordinance.* Whenever the corporate limits of any city or incorporated village shall hereafter be altered, extended or reduced, or the population thereof, or of any ward or wards thereof, has been or may be so increased or diminished as to render, in the opinion of the council, a division or redistricting of the corporation into wards, or a change in the boundary of any ward or wards necessary, the same may be done by ordinance at any regular meeting of the council.

SEC. 406. *Publication of notice of ordinance.* Upon such ordinance being introduced, the council shall, by resolution, require the clerk to give notice of the pendency of the same, and of the proposed change, increase or reduction of boundaries, in some newspaper published and of general circulation in the corporation, for the period of three consecutive weeks prior to any action being taken thereon.

SEC. 407. *Wards in annexed territory.* When territory is annexed to any corporation, or one corporation is annexed to another corporation, such territory or corporation so annexed may be organized into a new ward or wards, or attached to any existing ward or wards, as the council may deem proper.

SEC. 408. *Boundaries of wards by streets, alleys, etc.* All wards which may hereafter be established, and all changes in existing wards, shall be bounded by streets, alleys, avenues, public grounds, or corporation lines, and be composed of adjacent and compact territory; and the several wards, at the time of redistricting, shall contain as nearly an equal number of inhabitants as may be practicable.

SEC. 409. *Election of representatives of new wards.* Whenever any change in the number of wards or alteration in the boundaries of any ward shall be made, or new wards shall be established, there shall be no election for members of council or ward officers until the next ensuing annual election for corporation officers.

SEC. 410. *Effect of change of wards on members of council.*

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[1] Act of March 21, 1863 (60 O. L. 25); March 19, 1868 (65 O. L. 28.)

Nothing in this chapter contained shall be construed to limit or abridge the term of office of any member of the council; and whenever it shall so happen that by reason of the alteration of any boundary of any ward or wards, or change in the number of the wards, the number or numbers of the ward in which any member or members may reside shall be changed, he or they shall be deemed and taken to represent that ward in which he or they may, after such change, reside during the remainder of his or their term of office.

CHAPTER XXX.

STREET RAILROADS.[1]

SECTION.
411. Street railroads authorized by ordinance.
412. Notice of application for ordinance to be published.
413. Grade of streets where railroads are constructed.
414. Pavements of streets where railroads are constructed.

SEC. 411. *Street railroads authorized by ordinance.* The council, on the written application of any corporation, individual or individuals, desiring to construct any street railroad in any city or incorpo-

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[1] Act of March 27, 1866 (63 O. L. 55); April 17, 1867 (64 O. L. 250.)

While the employes of a street railroad company are bound to the highest degree of care and prudence in the management of the teams attached to their cars, with a view to secure the safety of their passengers, a different rule prevails in respect to members of the general public, between whom and the company no relation arising out of contract, express or implied, exists. As to such persons, the employes of the company are only bound to exercise what amounts, under all the circumstances of the case, to ordinary care and prudence. *Pendleton Street R. R. Co.* v. *Shires*, 18 O. S. —.

The 12th section of the Act of 1852, providing for "the creation and regulation of incorporated companies in the state of Ohio," authorized a municipal corporation, in agreeing with a railroad company upon the terms and conditions upon which the latter might occupy public grounds, to demand and receive compensation for the injury to the general public use resulting from such occupation. *Cincinnati* v. *Pendleton, etc., R. R. Co.*, Superior Court of Cincinnati, General Term, 1862. MS.

It was no objection that the compensation was provided for by a promise on the part of the company to pay according to the amount of business transacted, and the extent of their use of the public property. *Ib.*

A contract between the parties whereby the defendants, in consideration of the grant of a right to lay rails, run cars and transport passengers upon certain streets in Cincinnati, for twenty years, agreed to pay the plaintiff one cent for each passenger carried, was valid. *Ib.*

On the 1st of July, 1859, the city council and the street railroad companies, acting under the 12th section of the general Corporation Act of 1852, entered into contracts, for the use of certain streets for street railroad purposes, by which contracts the companies agreed to sell tickets in packages of twenty-five for a dollar; and also to abide by and perform the provisions of the ordinance of July 1, 1859, and of all the resolutions and ordinances thereafter passed by the city council on the subject; and the city council, on the 10th of June, 1864, passed an ordinance requiring the sale of package tickets on the cars: *Held*,

rated village, before the work of constructing such road be commenced, shall, by ordinance, grant permission therefor, and prescribe the terms and conditions upon, and the manner in which such road shall be con-

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1. That the stipulation requiring the companies to sell packages of twenty-five tickets for a dollar, was not rendered void, by the fact that it had no connection with the care of the streets; nor by the principle that it fell within the legislative power of the city council; nor was it void upon the ground that the 12th section of the act of 1852, under which it was made, did not apply to street railroads. *Cincinnati* v. *Cincinnati Street R. R. Co.*, Superior Court of Cincinnati, 1866. MS.

2. That these street railroad companies, organized under the act of 1852, were legal corporations, and that these contracts, made under the 12th section of the act, between them and the city, "upon the manner, and upon the terms and conditions upon which" the streets lying in their respective routes "should be used," were valid. *Ib.*

3. That if it were otherwise, and the 12th section of said act were held not to apply to street railroads, nevertheless said companies, having been reorganized under the Street Railroad Act of 1861, and having subsequently obtained from the city council several modifications, and enjoyed all the benefits of the contracts, had thereby ratified and confirmed, and could not now be permitted to repudiate them. *Ib.*

4. That the companies are bound, by said contracts, to keep and sell package tickets on the cars, agreeably to the ordinances on that subject, with such additions only, to the contract price, as the revenue acts of Congress allow.

5. That the revenue acts of Congress do not relieve the companies from their obligation to sell tickets in packages of twenty-five, and that where such packages are sold, no fraction of a cent is involved, except the half cent, after adding the two and one-half cents to the dollar; and the companies are therefore bound to furnish tickets on their cars in packages of twenty-five for not more than $1.03. *Ib.*

6. That the city is entitled to have this obligation enforced by a decree for specific performance, and also to a provisional injunction. *Ib.*

[The applications for injunctions in the four cases, involving the same principles, were heard together, as one application, before Judge Taft, assisted by his associates.]

By an ordinance of the city council, adopted July 1, 1859, it was provided, among other things, that before any street railroad company should commence to run its cars upon any street where it will injuriously affect or interfere with the business of any omnibus line, it shall, at the option of the owner of such omnibus line, purchase the same, together with all property belonging to and used in such omnibus business, at a price to be agreed upon between the railroad company and the owner of such omnibus line, or if they can not agree, then the matter to be determined by referees, whose valuation is to be final and conclusive: *Held*, that while it is competent for the city council, acting for and on behalf of the municipal corporation, to designate the terms and conditions upon which street railways may occupy the streets, so as to "provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of such corporations and the inhabitants thereof," (Municipal Act of 1852, § 34); yet that this related to the public at large, and that it was "foreign to the duty and beyond the power" of the city council gratuitously to confer upon the omnibus owners a right to compel the railroad company to buy out the omnibuses, etc. That such legislation would be for private and not for public interests, and so beyond the proper scope of municipal legislation. *Langdon* v. *Passenger R. R. Co.*, Superior Court of Cincinnati, General Term, 1868. MS.

F. brought suit against N. for paving with Nicholson pavement. N. answered, that in 1859, the Pendleton, etc., Str. R. R. Co., as a part of the con-

structed and operated, and the streets and avenues which shall be used and occupied therefor.

SEC. 412. *Notice of application for ordinance to be published.* No ordinance for such purpose shall be passed until public notice of

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tract under which it was permitted to occupy the street, agreed with the city council to bowlder and keep in repair such street, and by reason of that obligation, he (N.) acquiesced in such use of the street; but in 1865, the city, for a valuable consideration, released the said railroad company from such obligation; whereupon N., by cross-petition, asked that the city might be made a party, and adjudged to pay all that was due to F. for paving in front of N.'s property. *Held*, that a demur to such answer and cross-petition must be sustained. *Foltz* v. *Lyons*, Superior Court of Cincinnati, General Term, 1869. MS.

Where a railroad company, under the authority of its charter and an ordinance of a city, constructs a railroad through a street of the city, thereby making embankments of earth, gravel, wood and iron above the level of the street, so as to obstruct free and safe passage to and from a lot and dwelling-house thereon, adjoining on such street; and where such company, under the authority aforesaid, runs steam-engines, locomotives and cars along such street and railroad, thereby making noises, and shaking, disjointing and disturbing such dwelling-house; and where such company under the authority aforesaid, and for the purpose of propelling such engines, locomotives and cars, keeps up dangerous fires, thereby generating noxious vapor, smoke and filth, near to, and diffusing the same in and about, such lot and dwelling-house, so as to render the air unwholesome, and to discommode the occupant and owner of such lot and dwelling-house: *Held*,

1. That such owner and occupant is entitled to damages for any obstruction to the street by earth, gravel, timber or rails substantially affecting his use of such street as an appurtenance to his premises. *Parrot* v. *Cin., Ham. & Day. R. R. Co.*, 10 O. S. 624.

2. That in respect to the noises, smoke, vapor, or other discomforts arising from the ordinary use of the railroad by the company, the occupant and owner of such lot and dwelling-house has no more right to recover damages of the company than any citizen who resides, or may have occasion to pass, so near the street and railroad as to be subjected to like discomforts. That a railroad authorized by law, and lawfully operated, can not be deemed a private nuisance. *Ib.*

The possibility that a railway may be abused to the public inconvenience, forms no ground for intercepting the progress of its construction, and preventing the laying of the track. Though the running of cars through a street may somewhat obstruct the free passage of vehicles of another kind, yet unless that use by the cars be *unreasonable, or exclusive of others*, it forms no ground for restraint by injunction. *Sargent* v. *O. & M. R. R. Co.*, 1 Handy, 52.

The law presumes that railroads are benefits, unless it otherwise appears from the circumstances of the case. *Ib.*

Authority to construct a street railway in the street, and to run cars thereon, may be granted to a company incorporated for the purpose, when no private right of the adjoining lot-owners is thereby impaired. Such private right, being protected by the constitution, can only be taken after compensation is made in the manner provided in the constitution and laws. *Cincinnati & S. G. A. R. Co.* v. *Cumminsville*, 14 O. S. 523.

A finding of the court that such right will be impaired, by laying a street railway track near the sidewalk in front of the owner's house, is in no way qualified by the further fact, also found, that when the interests of the company, and of the general traveling public, are also taken into the account, the location would be as little injurious as in any other part of the highway. *Ib.*

the application therefor has been given by the clerk of the corporation, in one or more of the daily papers, if there be such, and if not, then in one or more weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant shall be given except to the corporation, individual or individuals that will agree to carry passengers upon such proposed railroad at the lowest rates of fare.

SEC. 413. *Grade of streets where railroads are constructed.* Before any street railroad shall be constructed on any street of less width than sixty-seven feet, with a roadway of forty feet or under, the council shall provide that the crown of the street shall be made a nearly flat uniform curve from curb to curb, without ditch gutters, and in such manner as to give all wheeled vehicles the full use of the roadway up to the face of the curb, after the plan of the streets now adopted in the cities of Philadelphia and New York.

SEC. 414. *Pavement of streets where railroads are constructed.* The council shall have power to require any part or all of the track between the rails of any street railroad, constructed within the corporate limits, to be paved with gravel, bowlders or the Nicholson wooden pavement, as may be deemed proper; but without the corporate limits, paving between the rails with bowlders, or the Nicholson wooden pavement, shall not be required.

CHAPTER XXXI.

GAS COMPANIES.[1]

SECTION.
415. Councils may regulate price of gas, etc.
416. Minimum not to be reduced during term agreed upon.
417. When council may occupy streets for gas purposes, etc.
418. Gas companies may be permitted to occupy streets.
419. Forfeiture of charter for neglect to furnish gas, etc.
420. A temporary failure shall work no forfeiture.
421. Gas measurers may be appointed.
422. Exclusive monopoly shall not be allowed to gas companies, etc.
423. Council may erect or purchase gas-works.
424. Trustees of gas-works.
425. To be elected at annual election.
426. Powers of board of trustees.
427. Laying of gas-pipes and expense thereof.

SEC. 415. *Councils may regulate the price of gas, etc.* The council of any city or incorporated village, in which gas companies or gas-light and coke companies may be established, are hereby empowered to regulate from time to time the price which such gas or gas-

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[1] Act of March 11, 1853; April 5, 1854; April 7, 1865 (62 O. L. 96); January 26, 1867 (64 O. L. 7, 8); April 5, 1866 (63 O. L. 144.)

That an information having been filed by the attorney-general, under the Act of May 1, 1852, against the defendant, by its corporate name, charging a usurpation of certain corporate franchises, and process having been issued and served accordingly, and the defendant having appeared and pleaded in a corporate capacity, setting up its charter, etc., it is not competent for the state, by replication, to deny the corporate existence of the defendant. Where the franchise to be a corporation is intended to

light and coke companies may charge for gas furnished by such companies to the citizens, public grounds and buildings, streets, lanes, alleys, avenues, wharves and landing-places; and said gas-light, or gas-light and coke companies shall in no event charge more for any gas furnished to such corporation or individuals than the price speci-

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be drawn in question, the proceeding should, under our statutes, be against individuals who usurp such franchise. *State* v. *Cincinnati Gas-light and Coke Company*, 18 O. S. —.

That the city council of the city of Cincinnati could not, without clear legislative authority, grant to any person or corporation an *exclusive* right to use the streets and alleys of the city for the purpose of laying down pipes for conveying gas to be used in lighting the city, for a term of twenty-five years, and thereafter, until the gas-works, pipes, fixings, etc., of the grantee should be purchased by the city. To enable the city council to grant such an exclusive right, by ordinance in the nature of a contract, the power must be shown to have been expressly granted, or to be so far necessary for the proper execution of the powers which are expressly granted, as to make its existence free from doubt. No such grant of powers to the city council is to be found either in the City Charter of March 1, 1834 (O. L. L., vol. 32, p. 244), or in the third section of the amendatory act of March 16, 1839. (O. L. L., vol. 37, p. 297.) *Ib.*

The right to such use of the public streets of a city is a franchise, and must emanate either directly or indirectly from the legislature. *Ib.*

The use of the streets, etc., for the purpose aforesaid by the defendant for twenty-five years prior to the filing of the information, does not bar an inquiry into the right of the defendant to their *exclusive* use. It is not inconsistent with the use of unoccupied portions of the same streets by others for a like purpose; and the fact that others have not so used the streets does not make defendant's user the exercise of a right to exclude others. *Ib.*

A judgment in favor of the defendant, heretofore rendered by the District Court of Hamilton county, upon an information in the nature of a *quo warranto*, filed by the prosecuting attorney of that county, upon an individual relation, is not a bar to a subsequent information of a similar character, filed by the attorney-general, in the exercise of the discretion given him by the statute. *Ib.*

In the enactment of the 30th, 31st and 32d sections of the act of March 11, 1853 (S. & C. 1534), which empower city councils to regulate by ordinance, from time to time, the price to be charged by gas-light or gas-light and coke companies for gas furnished by them, and also in the supplementary act of April 5, 1854 (S. & C. 1537), there is no evidence of an intention to exempt the defendant from the operation of those statutory provisions. And, as the power to alter, modify or repeal defendant's charter was expressly reserved therein, it was competent for the legislature to subject the defendant to such supervision and limitation of prices. *Ib.*

An ordinance of the city council, duly passed, pursuant to the power given as above, and fixing the maximum price to be charged by defendant for gas, for the period of one year from its date, is obligatory upon the defendant; and disobedience to its requirements can not be justified by the fact that a decree of the circuit court of the United States, within and for the Southern District of Ohio, in a cause in which one S. D. was complainant, and the defendant and the city of Cincinnati were defendants, the present defendant was and still is enjoined from obeying such ordinances. The state was no party to that suit, and her right to assert the validity of the ordinance in a prosecution like the present is unaffected by the decree rendered therein. *Ib.*

The supplementary act of 1854, before referred to, did not so modify the power given to the city council by the act of 1853, to regulate the price of

fied by ordinance of such council; and such council shall also have power to regulate and fix the price which such companies may charge for the rent of their meters.

Sec. 416. *Minimum not to be reduced during term agreed upon.* In case the council fix the minimum price at which they shall require any company to furnish gas to the citizens or public buildings, or for the purpose of lighting the streets, alleys, avenues, wharves, landing-places and public grounds, for a period not exceeding ten years, and the company assents thereto by written acceptance filed in the office of the clerk of the corporation, it shall not be lawful for the council to require said company to furnish gas at a less price during the period of time agreed on, not exceeding ten years as aforesaid.

Sec. 417. *When council may occupy streets for gas purposes, etc.* If such companies shall at any time be required by the council to lay pipes and light any street, alley, avenue, wharf, landing-place, public ground or building, and shall refuse or neglect for six months after being notified by authority of the council to comply with such requirement, the council may lay pipes and erect gas-works for the lighting of said streets, alleys or public grounds, and all other streets, alleys and public grounds not already lighted; and said gas companies, or gas-light and coke companies, shall thereafter be precluded from using or occupying any of the streets, alleys, public grounds or buildings not already furnished with gas-pipes of such companies, and the council may open any street for the purpose of conveying gas as aforesaid.

Sec. 418. *Gas companies may be permitted to occupy streets.* The council may at any time after the default mentioned in the preceding section, permit such gas companies to use and occupy the streets, allies and public grounds of such corporation for the purpose

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gas, as to make the assent of the defendant necessary in order to give validity and effect to an ordinance passed for that purpose. Such assent, when properly evidenced, would give to the ordinance the character of a contract, and put an end to the power of council to lower the price of gas during the time specified in the ordinance. But without such assent the power to regulate prices, from time to time, would remain in full force. *Ib.*

The intention of the legislature, in empowering city councils to regulate the price of gas, was to limit incorporated gas companies to fair and reasonable prices for the gas which they might furnish for public or private use. This discretionary power of regulation might have been vested elsewhere; but wherever vested, it must be exercised in good faith, for the purpose for which it was given. If, in the colorable exercise of this power, a majority of the members of the council, for a fraudulent purpose, combine to pass an ordinance fixing the price of gas at a rate at which they well know it can not be manufactured and sold without loss, such an ordinance, so fraudulently passed, would impose no obligations on the gas company intended to be affected thereby. And in a proceeding like the present, the good faith of the members of the city council who passed the ordinance may be inquired into. *Ib.*

Section 3 of the act of April 6, 1866, "for the inspection of gas-meters, the protection of gas consumers, and the protection and regulation of gas companies," was not in conflict with the second section of the twelfth article of the constitution. *Cincinnati Gas Light & C. Co.* v. *State*, 18 O. S. —.

of lighting the same, and furnishing gas to the citizens and public buildings.

SEC. 419. *Forfeiture of charter for neglect to furnish gas, etc.* A neglect to furnish gas to the citizens and other consumers of gas, or to the corporation, by any company, in accordance with the prices fixed and established by the council from time to time, shall forfeit all rights of such company under the charter by which it has been established; and the council may proceed to erect, or by ordinance empower any person or persons to erect gas-works for the supply of gas to such corporation and its citizens; provided, that nothing in this section, or in sections 416 and 417, shall operate to impair or affect any contract heretofore made between any municipal corporation and any gas-light and coke company.

SEC. 420. *A temporary failure shall work no forfeiture.* A temporary failure to furnish gas shall not operate as a forfeiture, unless such failure shall be through the neglect or misconduct of such gas-light or gas-light and coke company.

SEC. 421. *Gas measurers may be appointed.* The council of any corporation in which gas-works may be constructed, may provide by ordinance for the appointment of one or more gas measurers, whose duty it shall be to inspect all gas-meters and certify the correctness of all bills made against the consumers of gas, and perform such other duties as may be prescribed by ordinance.

SEC. 422. *Exclusive monopoly shall not be allowed to gas companies, etc.* It shall not be lawful for any council to agree by ordinance, contract or otherwise, with any person or persons, for the construction or extension of gas-works for manufacturing or supplying the corporation or its inhabitants with gas, which shall give or continue to any person or persons making such agreement with the council, the exclusive privilege of using the streets, lanes, commons, or alleys, for the purpose of conveying gas to the corporation or the citizens thereof, or which shall deprive the council of the right to designate the kind of meter to be used for the correct measurement of the gas furnished under such agreement and to provide for inspecting and regulating the same, or which shall not specify the exact quality of the gas to be furnished, and reserve to the council the right to enforce an exact compliance with such specification, under such rules as the council may prescribe; nor shall the council make any such agreement which shall not secure to the council the right to purchase such works, and all the appurtenances belonging thereto, at any time within the existence of such contract or agreement.

SEC. 423. *Council may erect or purchase gas-works.* The council of any city or incorporated village shall have power, whenever it may be deemed expedient and for the public good, to erect gas-works at the expense of the corporation, or to purchase any gas-works already erected therein.

SEC. 424. *Trustees of gas-works.* When such purchase shall have been made, said council shall appoint a board of five trustees, who shall manage the said gas-works and supply said corporation and

the citizens thereof with gas, until their successors shall be elected and qualified, as hereinafter provided.

SEC. 425. *To be elected at annual election.* At the annual election occurring next after such purchase, the qualified voters of the corporation shall elect a board of five trustees, to be known as the Trustees of Gas-Works, who shall hold their office for the term of five years, except that at the first election one trustee shall be chosen for one year, one for two years, one for three years, one for four years, and one for five years; and thereafter one trustee shall be elected annually; and said trustees shall not receive any compensation for their services.

SEC. 426. *Powers of board of trustees.* The said board shall have power to construct gas-works, extend gas-pipes, manufacture and sell gas and coke, collect gas bills and other moneys due for gas, coke, or other material sold by them, and disburse the same; to manage, conduct and control said gas-works; to prescribe by by-laws the price of gas and coke, under such rules and regulations as, by ordinance, the council may prescribe, and the manner of using gas; and, to carry into effect the provisions of this section, shall also have power to purchase material, employ laborers, appoint officers, purchase or lease the necessary real estate, and erect buildings thereon; and they shall be required to report to the council as often as said council may deem proper.

SEC. 427. *Laying of gas-pipes, and expense thereof.* The council may prescribe, by ordinance, for the laying down of gas-pipes in all highways about to be paved, macadamized, or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in which the same are laid; but in no case, excepting as a sanitary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curb-stone.

CHAPTER XXXII.

LIGHTING BRIDGES AND RAILWAYS.[1]

SECTION.
428. Council may provide for lighting bridges.
429. Ordinance for that purpose.
430. Character of the ordinance.
431. Notice of requirement to light bridge to be given.
432. When council may cause lighting to be done.
433. Expense to be a lien upon bridge.
434. How lien may be enforced.

SEC. 428. *Council may provide for lighting bridges.* The council of any city or incorporated village may provide for lighting any bridge located in whole or in part in the corporation, owned by any individual, company, association or corporation, and also for lighting any portion of any railway within the same.

SEC. 429. *Ordinance for that purpose.* Whenever it shall be deemed necessary by the council of any city or incorporated village to

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[1] Act of 1852, § 26, March 9, 1866; 63 O. L. 36.

have such bridge or railway lighted, the council shall pass an ordinance for that purpose, requiring the individual, company, association or corporation owning the same, to light such bridge or railway within a specified time.

SEC. 430. *Character of the ordinance.* The ordinance shall specify the manner in which such bridge or railway shall be lighted, and the number and style of lamp-posts and lights and fixtures, and the time such lights shall be kept burning in each twenty-four hours.

SEC. 431. *Notice of requirement to light bridge to be given.* Notice of such requirement to light any bridge or railway, shall be given at least twenty days before any penalty or charge shall be imposed for default. Such notice may be given by delivering to any owner, or part owner, or any person having possession, charge or management of such bridge or railway, a written or printed copy of the ordinance.

SEC. 432. *When council may cause lighting to be done.* Should the owner or owners of such bridge or railway neglect or fail to do said lighting, in conformity with the provisions of such ordinance, for twenty days after notice, as aforesaid, the council may immediately proceed to cause such lighting to be done at the expense of the owner or owners of such bridge or railway.

SEC. 433. *Expense to be a lien upon bridge.* The council may direct the manner in which the expense of such lighting shall be assessed; and when assessed the amount shall be due and payable, and shall be a lien on such bridge and the land on which the same is built, or upon the real estate of the railway company, as the case may be.

SEC. 434. *How lien may be enforced.* Such charge may be collected, or the lien enforced, in the manner pointed out in the chapter providing for the assessment of damages and expenses for making public improvements.

CHAPTER XXXIII.

SPRINKLING STREETS.[1]

SECTION.
435. When council may order sprinkling of streets.
436. Assessment for expense of sprinkling.
437. Assessment a lien on lands charged.
438. Expense of collecting to be added to assessment.

SEC. 435. *When council may order sprinkling of streets.* On written petition of not less than one-half the owners of feet front of the land fronting on any street, or any specified part thereof, the council of any city or incorporated village may order such street, or specified part thereof, to be sprinkled with water, at such time or times as the council may deem proper.

SEC. 436. *Assessment for expense of sprinkling.* To pay the expense of such sprinkling, they may make assessments on the lands abut-

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[1] Act of April 6, 1866; 63 O. L. 186.

ting on such street, or specified part thereof, either on the valuation thereof, as listed for taxation, or by the foot front, and such assessments may be enforced by suit against the owner or occupant of such land, or part thereof, or certified to the county auditor, and by him placed on the county duplicate, and collected by the county treasurer as other taxes are or may be collected; provided, that this section shall not apply to premises held and used by any religious society exclusively as a place for public worship, unless such society shall have joined in the petition mentioned in the last preceding section.

SEC. 437. *Assessment a lien on lands charged.* All such assessments shall be a lien on the lands charged, from the time the council determine the amount assessed against each parcel of land.

SEC. 438. *Expense of collecting to be added to assessment.* In placing any such assessment on the duplicate, the county auditor is hereby authorized and required to add to each assessment such additional per centum as he may deem necessary to defray the expenses of collecting the same.

CHAPTER XXXIV.

CONTROL OF STREETS, BRIDGES AND VEHICLES.[1]

SECTION.

439. Council to have control of streets, public grounds, etc.
440. Acceptance of dedication of streets by council.
441. Council may prescribe width of tires, fix rates of transportation, etc.

SEC. 439. *Council to have control of streets, public grounds, etc.* The council shall have the care, supervision and control of all public highways, bridges, streets, avenues, alleys, sidewalks and public grounds within the corporation, and shall cause the same to be kept open and in repair, and free from nuisance.

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[1] Act of 1852. § 63, as amended March 18, 1859; 4 Curwen, ch. 1956.

The extension of the city limits, so as to include a public county road, vests thereafter the exclusive control of such road in the city authorities. *Ridenour* v. *Saffin*, 1 Handy, 464–479.

Although the manner of the dedication, and the principles and rules of property applicable to public highways and public squares or commons, in cities and villages, may rest upon the same ground, yet the *use* and *purpose* of each is different and clearly distinguished from the other. *Langley* v. *Gallipolis*, 2 O. S. 107.

The easement of a public highway comprehends the rights of all individuals in the community, whether upon foot, on horseback, or with any kind of vehicle, to pass and repass, together with the right of the public to do all the acts necessary to improve it and keep it in repair. But the use or beneficial purpose of a public common or square, in a city or village, where no special limitation or use is prescribed by the dedication, is such, that it may be improved and ornamented for recreation and health, or for the public buildings, or as a place for the transaction of public business of the people of the city or village; or both for the purposes of pleasure and business, at the discretion of the municipal authorities. *Ib.*

The dedication of "La Place" in the village of Gallipolis, subject to the

SEC. 440. *Acceptance of dedication of streets by council.* No street or alley, which has been or may be dedicated to public use by the proprietor of ground in any corporation, shall be deemed a public street or alley, or to be under the care or control of the council, unless

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single restriction, that it should not be obstructed on the bank of the Ohio river by any kind of public buildings, was for the usual and ordinary purposes of a public square, and as *such*, subject to the control of the public authorities of the people of the village. *Ib.*

The long-continued use of this ground as an uninclosed public common, could lay no foundation for any presumption against the right of the village to improve the ground, and use it in any other manner deemed more advantageous and beneficial to the public, within the terms of the dedication. *Ib.*

The provision in the act incorporating the town, which, among other things, confers the power "to regulate, improve, and keep open, unobstructed and in repair, the landings, commons, streets, etc., within the corporation," has reference to the appropriate *use* and *object* to which each was dedicated, requiring each to remain open and unobstructed, *so far* as necessary to accomplish the appropriate object for which it was designed, and no further. *Ib.*

The right of transit, in the use of the public highways, is subject to such incidental, temporary or partial obstructions as manifest necessity requires; and among these are the temporary impediments necessarily occasioned in the building and repair of houses on lots fronting upon the streets of a city, and in the construction of sewers, cellar drains, etc. These are not invasions, but qualifications of the right of transit on the public highway; and the limitation on them is, that they must not be unnecessarily and unreasonably interposed or prolonged. *Clark* v. *Fry*, 8 O. S. 358.

Such temporary obstructions upon the highway, when guarded with due care to prevent danger to the public, and not unnecessarily extended or continued, are not nuisances, and do not require a license from the municipal authority to legalize them; although suitable regulations by the city authorities, requiring such obstructions to be properly guarded, and to prevent them from being made in an improper manner, or continued unreasonably, are usual and highly proper. *Ib.*

A city ordinance, imposing, in general terms, a penalty on any person for incumbering or obstructing any part of any street, lane or alley, etc., rationally construed, has manifest reference to nuisances—in other words, to incumbrances, or obstructions, which, but for some special license, would be unlawful. *Ib.*

Under the provisions of the act of May 3, 1852, the city council of Columbus had authority to pass an ordinance prohibiting sales at auction, upon the streets, alleys, sidewalks, and public grounds of said city. Such ordinance was neither clearly unreasonable, nor in restraint of trade. *White* v. *Kent*, 11 O. S. 550.

In an action by a contractor with the city against an owner of property, to recover an assessment, it appeared that, in 1855, the owners of the property through which the street was opened, caused it to be surveyed, graded and paved at their own expense, and it had ever afterward been used for all the purposes of a street by the public, and a street railway had been placed on it by authority of the city council, which also permitted gas and water pipes to be introduced through it. But the city council had not, by ordinance, accepted the dedication of the street. The act of 1852, § 63, provided that no street or alley should be deemed a public street or alley, unless the dedication had been accepted and confirmed by ordinance, specially passed for the purpose. *Held*, per Matthews, J., that in view of this legislation, whatever the inconvenience to the public might be, there was no doubt of the duty of the court to enforce the law. The

the dedication shall be accepted and confirmed by an ordinance specially passed for such purpose.

SEC. 441. *Council may prescribe width of tires, fix rates of transportation, etc.* The council shall have power to prescribe the width of the tires of all wagons, carts, drays, ond other vehicles, used in the transportation of persons from one part of the corporation to

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legality of the plaintiff's contract to perform the work, and charge the cost upon the owner, at the price for which he sued, depended on the question whether the street was a *public street*, under the care and control of the city council; and that fact being conclusively negatived, the plaintiff could not recover, and was remitted to his action against the city. *Goshorn* v. *Cordeman*, Superior Court of Cincinnati. MS.

But in *Bonte* v. *Wisby*, Superior Court of Cincinnati (MS.), the court was of opinion that § 63 did not prevent the same result from being reached by acts *in pais* of the city authorities; and that where the council had passed an ordinance, recognizing the street by name as one already laid out and dedicated by record, and had ordered it to be improved, and other acts indicated that it was the intention of the city authorities to accept it for the public, and the defendant had notice in fact, but made no objection, this had the same effect as the act of acceptance mentioned in that section. In the opinion of the court delivered by Storer, J., Taft, J., concurred; and the remaining Judge dissented, on grounds similar to those maintained by Matthews, J.

The keeping streets in repair is a public duty imposed on the city by statute. An action will lie where an individual is specially injured in consequence of the non-observance or non-discharge of such duty, or through misfeasance or malfeasance in its discharge. *Farrelly* v. *Cincinnati*, 4 Law Gaz. 33.

An individual can not enforce a public right, or redress a public injury by a suit in his own name. It is only when he suffers some special damage, differing in kind from that which is common to the public, that a personal remedy accrues to him. *Ib.*

A traveler who is forced to abandon his nearest route, by reason of the non-repair of a street, and seeks his destination by a longer and more circuitous road, whereby he suffers injury to his business, does not sustain such special damage as to entitle him to an action against the party charged with the duty of keeping the way in repair. *Ib.*

If having access to other routes, he voluntarily uses the founderous way, he can not recover for a loss thereby incurred. *Ib.*

The street being intended primarily for *travel*, not *trade*, the recovery, if any, must be limited to the injury sustained in the use for travel, viz: the delay and loss of time, and can not include a loss of the profits of trade or transportation. *Ib.*

A grant by the city council to use the streets of a city, for a purpose not incompatible with the public use of the street, in other modes, and for other purposes, is not an invasion of private rights, nor a breach of public trust. The uses of a street in a city are not necessarily limited to the passage and repassage over the same of wagons, carriages, or such other modes of conveyance as were in existence at the time of their dedication. Towns are laid out, and streets therein dedicated, not for the present only, but for future time; and that use of a street, which, in one age or generation, would be highly appropriate, might in another become exceedingly burdensome. Hence it is that power is given to the corporate authorities to regulate the use of their streets and highways by the public. And when such corporate authorities exercise their judicial function, within the scope of their powers, the court will not interfere with such judgment, unless it be clearly shown to be founded in mistake, fraud, or a wanton spirit. It is true that they have no power to abridge

another, or in the transportation of coal, wood, stone, lumber or iron, or other articles in the corporation; to establish stands for hackney coaches, cabs, omnibuses, and enforce the observance and use thereof, and to fix the rates and prices for the transportation of persons and property in such coaches and other vehicles, from one part of the corporation to another.

CHAPTER XXXV.

WHARVES, DOCKS AND HARBOR-MASTERS.[1]

Section.		Section.	
442.	Council may establish wharves, docks, etc.	444.	Control of shore, appointment of harbor masters, etc.
443.	Wharves, etc., must have uniform grade.	445.	Copies of surveys to be prima facie evidence, etc.

Sec. 442. *Council may establish wharves, docks, etc.* The council of any city or incorporated village shall have power to establish, construct, repair, control and regulate landing-places, wharves, docks, piers and basins; to establish, control and regulate the grades of wharves and landing-places, and to fix the rates of landing, wharfage and dockage, and to use, for the purposes aforesaid, any public landing or any property belonging to or under the control of the corporation.[2]

Sec. 443. *Wharves, etc., must have uniform grade.* All wharves or landing-places hereafter constructed, shall conform to a uniform grade to be established by the council; and it shall be unlawful for the owner, lessee or occupant of such property to construct any wharf or landing-place without first obtaining the consent of the council, and conforming to the established grade.

Sec. 444. *Control of shore, appointment of harbor-masters, etc.* The council shall have the use and control, for the above purpose, of

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or destroy private rights, nor wantonly or unnecessarily interrupt them; nor to create or allow a public nuisance in such streets; but the laying of a railroad track through even the great thoroughfares of a city, is not such an obstruction of the public streets as necessarily to amount to a nuisance; nor necessarily such an abridgment of the rights of adjacent property owners as to warrant the court in interfering by injunction. To warrant such interference, the use must be *unreasonable*, or to the *exclusion of others*. The road will be *presumed* to be a *benefit*, unless it otherwise appear from the special circumstances of the case. *Sargent* v. *O. & M. R. R.*, 1 Handy, 52.

1 Act of 1852, § 64, January 30, 1863; 60 O. L. 3.

2 The territorial limits of the state of Ohio extend on the southeast, at least, to the line of ordinary low-water mark, on the northwest side of the Ohio river. *Booth* v. *Hubbard*, 8 O. S. 243.

The defendant having been for a long time in the adverse possession of a ferry-landing at the foot of Lawrence street in Cincinnati, and receiving rents therefor, was not liable to the city for such receipts until the right of the city to such landing was established by a proper proceeding for that purpose. *Cincinnati* v. *Walls*, 1 O. S. 222.

the shore or bank of any lake or river, not the property of individuals, to the extent and in any manner that the state can grant such use or control; and the power to appoint harbor-masters, wharf-masters, port-wardens, and other officers usual or proper for regulation of the navigation, trade or commerce of the corporation, to define their duties and powers, and fix their compensation.

SEC. 445. *Copies of surveys to be prima facie evidence, etc.* Copies of examinations and surveys, and of the proceedings of any port-warden, in the discharge of the duties of his office, certified under his hand and seal, shall be prima facie evidence of the matters therein stated.

CHAPTER XXXVI.

FERRIES.

SECTION 446. License, regulation, etc., of ferries.

SEC. 446. *License, regulation, etc., of ferries.* The council of any city or incorporated village, shall have the exclusive power to establish, regulate and license ferries, from such corporation or any landing therein, to the opposite shore, or from one part of the corporation to another; and in granting such license, to impose such reasonable terms and restrictions, in relation to the keeping of such ferries, and the time, manner and rates of the carriage and transportation of persons and property, as may be proper, and to provide for the revocation of any such license, and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed.[1]

CHAPTER XXXVII.

LICENSING SHOWS, AUCTIONEERS, ETC.[2]

SECTION.
447. General licensing powers of council.
SECTION.
448. Licensing of vehicles, undertakers, etc.

SEC. 447. *General licensing powers of council.* The council of any city or incorporated village, shall have power to license all exhibitors of shows and performances of every kind not prohibited by law; all

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[1] Act of 1852, § 65.

[2] Act of 1852, § 96.

Under a section of its charter, which provided that "they shall have power to license and regulate all carts, wagons, and drays, and every description of two and four-wheeled carriages which may be kept in said city for hire: *Held*, that the city council of Cincinnati had power to license and regulate draymen, and might require a reasonable sum, by way of excise on the special employment. But that the right to license and regulate, conferred no taxing power over the draymen. *Cincinnati* v. *Bryson*, 15 O. 625; *Mays* v. *Cincinnati*, 1 O. S. 268; *Baker* v. *Cincinnati*, 11 O. S. 534.

hawkers and peddlers; all auctioneers of horses and other animals in the highways or public grounds of the corporation; all venders of gunpowder and other explosives; all taverns and houses of public entertainment; all hucksters in the public streets or markets; and in granting such license, may exact and receive such sum or sums of money as the council may think expedient.

SEC. 448. *Licensing of vehicles, undertakers, etc.* The council shall also have power to license the owners of all vehicles of every de-

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By the 9th section of the Charter of the city of Cincinnati, the city council were required to establish and regulate the markets and market places for the sale of provisions, etc. An amendatory act prohibited them from assessing any charge upon persons bringing provisions to the markets in wagons, etc., but allowed them to prevent huckstering and forestalling.

An ordinance of the city defining a huckster to be "any person, not a farmer or butcher, who should sell, or offer for sale, any commodity not of his own produce or manufacture," and subjecting such person to a penalty, unless he had previously obtained license and paid therefor a sum fixed by council, is in conflict with said amendatory act and void. *Mays* v. *Cincinnati*, 1 O. S. 268.

It was not in the power of the council, by ordinance, to include persons as hucksters who did not fall within the ordinary meaning of that term. *Ib.*

The power of taxation upon employment, not being conferred by the city charter, can not be exercised as a means for the prevention of huckstering. *Ib.*

The power of taxation being a sovereign power, can only be exercised by the general assembly when, and as conferred, by the constitution; and by municipal corporations only when unequivocally delegated to them by the legislative body. *Ib.*

The sum demanded for license to pursue an employment, when used as a means of supplying the public treasury, is a tax on such employment, and the city council of Cincinnati have no power to levy such a tax. *Ib.*

Money paid to procure license, when issued upon the petition of the party, without objection or protest, is, in the legal sense, a voluntary payment, and can not be recovered back. *Ib.*

The language of the court as to what shall be regarded as an involuntary payment, was quoted with approbation in *Marietta* v. *Slocomb*, 6 O. S. 471, but was qualified in *Baker* v. *Cincinnati*, 11 O. S. 534, where it was held, that a payment may be, under circumstances, involuntary, and an action be brought to recover back the money, when the position or interests of the party are such as to require from another the performance of a duty enjoined by law, and he is illegally compelled to pay the money to induce such performance.

The 96th section of the act of the general assembly, for the organization of cities and incorporated villages, provided that a city council might license exhibitions of shows and performances; and "in granting such license, may exact and receive such sum or sums of money as the council shall think fit and expedient." Under this provision, and an ordinance passed for the purpose, the city council of Cincinnati exacted from the plaintiff, as a charge for a license to give theatrical exhibitions for six months, $63.50, and also a fee of one dollar for the officer issuing the license. *Held*, that the money was not illegally exacted, and that the exaction was not in violation of any provision of the constitution of the state, restricting the power of taxation vested in the general assembly. *Baker* v. *Cincinnati*, *supra*.

scription used for the transportation of persons and property, for hire in the corporation, and all undertakers and owners of hearses; but the owner of any such vehicle may be made liable for the breach of any ordinance regulating the conduct of the drivers thereof.

CHAPTER XXXVIII.

PAWNBROKERS.[1]

SECTION.		SECTION.	
449.	Pawnbrokers must be licensed.	451.	Penalty for failure to keep and refusal to exhibit record, etc.
450.	They must keep an open record of all their transactions.		

SEC. 449. *Pawnbrokers must be licensed.* Any person or persons carrying on the business of pawnbroker, or of loaning money on jewelry or other personal property, in any city or incorporated village shall take out a license from the city or incorporated village in which he or they do business, which license shall be fixed by ordinance at a cost not to exceed two hundred dollars per annum.

SEC. 450. *They must keep an open record of all their transactions.* The person or persons so licensed shall keep a correct list and description, in a book for that purpose, of all articles pledged or deposited with them, or on which advances of money have been made, or which may be purchased by him or them, which list and description shall at all times be open to the inspection of the chief of police of the corporation, or of a police officer deputed by him or by the mayor to make such inspection; and he or they shall, at all times, when required by the police officer or mayor aforesaid, produce and show any article so listed and described, which may be in his or their possession; and he or they shall also register in such book the name and place of residence of the depositor.

SEC. 451. *Penalty for failure to keep and refusal to exhibit record, etc.* Any person or persons carrying on the business of pawnbroker, who shall fail to take out a license therefor, or shall receive and advance money on any article or property pledged, and shall fail to keep a list, description and register as provided above, or who shall refuse to submit the same to the inspection of the chief of police or police officer deputed as aforesaid, or shall refuse to show the article or property when so required, shall, upon conviction thereof, before the police court or mayor of the corporation, be fined in any sum not less than ten dollars, nor more than one hundred dollars.

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[1] Act of March 13, 1863; 60 O. L. 16.

CHAPTER XXXIX.

FILLING UP LOTS AND REMOVAL OF OFFENSIVE SUBSTANCES.[1]

SECTION.
452. Power of corporation to fill lots, remove nuisances, etc.
453. Duty of owners to comply with directions.
454. In case of refusal or neglect, work to be done at expense of owner.

SEC. 452. *Power of corporation to fill lots, remove nuisances, etc.* All municipal corporations shall have power to cause any lot or lots of land within their limits, on which water shall at any time become stagnant, to be filled up, or drained, and to cause all putrid substances to be removed from any lot or lots; and may, from time to time, direct that such lot or lots, be filled up or drained, or that such putrid substances be removed by the owner or owners in such reasonable time, and in such manner, as may be directed by a resolution of the council or trustees of the corporation.

SEC. 453 *Duty of owners to comply with directions.* It shall be the duty of such owner or owners, his, her or their agent or attorney, after service of a copy of said resolution, or after a publication of the same in some newspaper of general circulation in such corporation for four consecutive weeks, to comply with the directions of such resolution within the time therein specified.

SEC. 454. *In case of refusal or neglect, work to be done at expense of owner, etc.* In case of a failure or refusal to comply with such resolution, the work required thereby may be done at the expense of the corporation, and the amount of money so expended shall be recovered

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[1] Act of 1852, § 32.

A resolution of a city council under § 32, municipal act (2 S. & C. 1506), directing lot-owners "to fill and drain their lots in such manner as shall be necessary to remove all stagnant water," requires, by reasonable construction, not merely the removal of water then on the lots, but the work to be so done as to prevent the recurrence of stagnant water from the same causes. *Poland* v. *Connelly*, 16 O. S. 64.

The power of creating municipal corporations necessarily implies authority to confer upon them such police powers as may be necessary for their internal government, and the resolution referred to, being a reasonable sanitary measure for preserving the health of the inhabitants, is not in conflict with the constitution. *Ib.*

Such resolution must be reasonably certain in its requirements; but where the work to be done is clearly defined in general terms, the fact of leaving to the owner, who bears the expense, the choice of the means of accomplishing the required result, will not render the resolution invalid. *Ib.*

Where, after default of the lot-owners, the work has been done under the authority of the city, it is no objection to the assessment that the expenses have not been paid, nor that the contractor agreed to receive a valid assessment in payment. Work done on the credit of the city is, in effect, done at its expense. *Ib.*

The corporation can not, by devolving the risk and cost of collecting the assessment upon the contractor, increase the burden of the owner. He can only be assessed for the cash value of the work. *Bliss* v. *Kraus*, 16 O. S. 54.

from the respective owners before a justice of the peace, or other court of competent jurisdiction; and such expense shall, from the time of the adoption of such resolution, be a lien on such lot or lots, which may be enforced by suit in the court of common pleas of the proper county; and like proceedings may be had as directed in relation to the improvement of streets.

CHAPTER XL.

MARKETS.[1]

Section.		Section.	
455.	Power to establish markets, erect market-houses, etc.	457.	No charge to be made for occupancy of market-space, etc.
456.	Power to regulate markets and marketing.	458.	No authority to prevent sale of produce at any time or place.

Sec. 455. *Power to establish markets, erect market-houses, etc.* The council of any city or incorporated village shall have power to erect market-houses, establish and regulate markets and market-places, for the sale of meats, fish, provisions, vegetables, and other articles necessary for the sustenance, convenience and comfort of the inhabitants; to prescribe the times for opening and closing the same, the kind and description of articles which may be sold therein, and the stands or places to be occupied by the venders.

Sec. 456. *Power to regulate markets and marketing.* The council shall also have power to prevent forestalling the markets, to prohibit or regulate huckstering in the markets, and to adopt such rules and regulations as are necessary to prevent fraud, and to preserve order in the markets; and they may authorize the immediate seizure, arrest and removal from any market, of any person or persons violating its regulations, together with any article in his or their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

Sec. 457. *No charge to be made for occupancy of market-space, etc.* No charge or assessment of any kind shall be levied upon any farmer or producer of vegetables or provisions bringing the same to market, for occupying a place, with or without horses and wagons used in bringing such produce to the market, in any of the market-spaces, or in the streets contiguous thereto, on market days and evenings previous thereto.

Sec. 458. *No authority to prevent sale of produce at any time or place.* Nothing herein contained shall be so construed as to authorize the council to pass an ordinance for the purpose of assessing or

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[1] Act of 1852, § 62, as amended May 1, 1854.

Under a power in the charter of a city to regulate markets, an ordinance providing for the collection, each market day, of twenty-five cents, from each person occupying a stand in the market-place, is valid, and may be enforced by a fine and judgment therefor, to be rendered in a summary process before the mayor. *Cincinnati* v. *Buckingham*, 10 O. 257.

Supra, ch. 37 and notes.

imposing any fine or punishment on any farmer or producer, for selling at any time within the corporation, any article of provision or vegetables in any street or streets, or market-spaces, during market hours.

CHAPTER XLI.

INSPECTORS OF PROVISIONS AND OTHER ARTICLES.[1]

SECTION.
459. Licensing of gaugers, inspectors, etc.
460. Amount of license to be fixed by ordinance.
461. License to be for one year; vacancy.
462. Extent of license.
463. Powers, penalties, etc., of inspectors.
464. Inspectors may appoint deputies.
465. Oath, bond, etc., of inspectors.
466. Injury from neglect or incapacity to be recovered on bond.
467. Removal of inspector for cause.
468. Provisions of former act applicable to inspectors of oils.
469. Fees for inspection.
470. Inspectors of beef, cattle, sheep, hogs, etc.
471. Rules for inspectors to be prescribed by ordinance.
472. Oath of office, bond, etc., of inspectors.
473. Compensation of inspectors.
474. Inspectors for other purposes may be appointed.

SEC. 459. *Licensing of gaugers, inspectors, etc.* The council of any city shall have power, whenever deemed necessary, to license one of the resident freehold electors of the corporation, possessing the necessary qualifications, to act within and for the corporation, as gauger and inspector of domestic and foreign spirits, linseed oil, lard oil, and carbon and mineral oils; one inspector of flour, meal and biscuit; one inspector of beef, pork, lard and butter; one inspector of pot and pearl ashes; and one inspector of fish, when exposed for sale in barrels or half barrels.

SEC. 460. *Amount of license to be fixed by ordinance.* The amount of the said license shall be fixed by ordinance, and shall be limited as follows: To inspect beef, pork, butter and lard, not less than fifty nor more than one hundred dollars; to inspect fish, not less than two hundred and fifty nor more than five hundred dollars; and to in-

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[1] Act of March 9, 1831 (3 Chase, ch. 892); Act of April 4, 1859 (4 Curwen, ch. 2014); February 11, 1832 (3 Chase, ch. 912); April 16, 1867 (64 O. L. 211); April 25, 1861 (58 O. L. 105); March 11, 1867 (64 O. L. 46); March 11, 1853, § 10.

Where, under the general law, a city council had power to appoint an inspector or sealer of weights and measures, and to enforce, by fine, the use of weights and measures sealed by such inspector: *Held*, that the fine assessed for the violation of the ordinance might be collected either by commitment of the person upon whom the fine is imposed, or by *fieri facias*. *Huddleson* v. *Ruffin*, 6 O. S. 604.

An ordinance of the city of Cincinnati, passed in pursuance of the 12th section of the act of March 5, 1860, "relating to cities of the first class," etc. (2 S. & C. Stat. 1539), providing for the appointment of an inspector and sealer of weights and measures by the city solicitor, from among persons designated by the board of officers of the Chamber of Commerce, is a valid ordinance; and when such inspector and sealer is duly appointed in accordance with the provisions of such ordinance, and thereupon tenders to the city council, for their acceptance, an official bond, in all respects unobjectionable, the city council have no discretion left, and must accept the bond. *Bellows* v. *Cincinnati*, 11 O. S. 544.

spect foreign and domestic spirits, linseed oil, lard and carbon or mineral oils, not less than seventy-five nor more then one hundred dollars.

SEC. 461. *License to be for one year; vacancy.* Upon the license fee, as required in the preceding section, being paid, the person named therein shall be authorized to act as such inspector for the period of one year from the date thereof; and in case of vacancy occurring by death or otherwise, during the term for which any inspector may have been licensed, the council may fill such vacancy by granting a license for such sum as may be deemed proper.

SEC. 462. *Extent of license.* The said license may authorize the inspector or inspectors, or any one or more of them, to inspect any one or more of the articles named in the preceding section.

SEC. 463. *Powers, penalties, etc., of inspectors.* The inspectors shall, within and for said corporation, have the same powers, perform the same duties, take the same oaths or affirmations, be governed by the same rules, and liable to the same penalties, as are prescribed in the act entitled "an act for the inspection of certain articles therein enumerated," passed March ninth, one thousand eight hundred and thirty-one, and the act entitled "an act to amend the act entitled an act for the inspection of certain articles therein enumerated," passed February eleventh, one thousand eight hundred and thirty-two.

SEC. 464. *Inspectors may appoint deputies.* Said inspectors shall have the power of appointing as many deputies to act under them as their respective duties in office may require, and for the conduct of the deputy, the principal shall be accountable and held liable.

SEC. 465. *Oath, bond, etc., of inspectors.* Every person so licensed as an inspector, shall, before entering upon the duties of his office, take an oath or affirmation, that he will faithfully and impartially execute the duties required of him by law, and shall enter into bond conditioned for the faithful performance of his duties as such officer, with sufficient security, to be approved by the council, as follows: For inspectors of beef, pork, butter and lard, the bond shall be three thousand dollars; and for inspectors of fish, foreign and domestic spirits, linseed, lard and carbon or mineral oils, one thousand dollars; which bond shall be filed in the office of the city clerk and made payable to the treasurer of the corporation, and shall be renewed, from year to year, as the council may require.

SEC. 466. *Injury from neglect or incapacity to be recovered on bond.* Any person injured by the misconduct, neglect or incapacity of any inspector, may, within one year after the cause of action shall have accrued, institute suit on such official bond, but the corporation shall not be liable for the costs of such suit; the said bond shall continue in force until the full amount of the penalty has been recovered, and any party obtaining judgment shall have execution as in other cases.

SEC. 467. *Removal of inspector for cause.* The council shall have full power and authority, on complaint and sufficient cause shown, to remove from office any inspector; but no inspector shall be removed unless upon the vote of two-thirds of all the members elected.

SEC. 468. *Provisions of former act applicable to inspectors of oils.* The council in the licensing of inspectors of carbon or mineral oils, and the inspectors of those oils, shall be governed by the provisions of an act entitled "an act to provide for the inspection of mineral oils for illuminating purposes, and to repeal acts therein named," passed April 16, 1867; and the said inspectors shall be liable to the penalties in said act now prescribed.

SEC. 469. *Fees for inspection.* The said inspectors shall be entitled to the following fees for their services, to be paid, on demand, by the party calling upon them, viz: For packing and inspecting every barrel of pork or beef, eighteen cents, and for every half barrel, thirteen cents; for every package or keg of butter or lard, ten cents; for packing and inspecting every barrel of fish, twenty cents and for every half barrel, fifteen cents; and for inspecting and gauging foreign and domestic spirits, linseed oil, lard and carbon or mineral oils, where there are less than twenty packages, ten cents each, and more than twenty, the sum of five cents each.

SEC. 470. *Inspectors of beef, cattle, sheep, hogs, etc.* The council of any city or incorporated village, whenever it may be deemed necessary, shall have the further power to appoint one inspector, and, if required, one or more assistant inspectors, of beef cattle, sheep, hogs, poultry, game, milk, milk cows, fresh meat and fresh fish.

SEC. 471. *Rules for inspectors to be prescribed by ordinance.* The council shall prescribe, by ordinance, the duties of said inspectors, define their powers and fix their term of office; and they are hereby authorized to prescribe penalties for the violation of ordinances passed in pursuance of this chapter, and determine the disposition of the above named articles when upon inspection they, or either of them, are found to be foul, tainted, or otherwise unfit for food.

SEC. 472. *Oath of office, bond, etc., of inspectors.* Before any such inspector or assistant inspector shall enter upon the discharge of the duties of his office, he shall take an oath or affirmation that he will faithfully and impartially execute the duties required of him by law; and such inspector shall, moreover, enter into bond with sufficient security to be approved by the council, in such sum as the council may require, not less than one thousand dollars, made payable to the corporation where such inspector is appointed; which bond shall be deposited with the clerk, conditioned for the faithful and impartial performance of the duties required of him by law.

SEC. 473. *Compensation of inspectors.* Said inspectors shall be paid such compensation, not exceeding the sum of fifteen hundred dollars each, per annum, in such manner and at such times as the council may determine.

SEC. 474. *Inspectors for other purposes may be appointed.* The council of any city or incorporated village may provide by ordinance for the appointment of a suitable number of inspectors, for all such purposes as are not provided for by law, who shall hold their office for the term of three years; and for issuing licenses to such inspectors, and to regulate the fees to be paid them for their services.

CHAPTER XLII.

IDENTITY OF CORPORATION AND TOWNSHIP LINES—CHANGE OF TOWNSHIP BOUNDARIES.[1]

SECTION.
475. When office of township trustees, etc., shall be abolished—infirmary directors.
476. Powers and duties of infirmary directors.
477. Duties of corporation treasurer and clerk.
478. Township property to vest in council, etc.
479. Suits, judgments, etc., to be transferred to corporation.
480. Change of boundaries in certain cases.
481. Annexation of surplus territory, etc.
482. When limits of two or more townships shall constitute but one, etc.
483. Application for change of boundaries in certain cases.

SEC. 475. *When office of township trustees, etc., shall be abolished—infirmary directors.* Whenever the corporate limits of any city or incorporated village become identical with those of any township, then and thereafter the office of township trustees, township treasurer, and township clerk, shall be abolished and cease; and all of the powers and duties of trustees of townships, conferred or prescribed by law, shall vest in and be performed by the council, except as to binding out apprentices and administering relief to the poor; and if such corporation is not already provided with an infirmary, the council shall forthwith, and from year to year, appoint one or more, and not exceeding three, directors of the infirmary, and prescribe their duties by ordinance.

SEC. 476. *Powers and duties of infirmary directors.* Such directors shall be clothed with all the powers and perform all the duties of township trustees, as to binding out and protecting apprentices, in relieving and removing paupers, and in counties having county infirmaries to make orders relative to paupers; which orders shall have the same validity, and be treated the same as like orders made by township trustees; and they shall have the power of recovering, in the name of the corporation, such expense as may be chargeable to other municipal corporations or persons.

SEC. 477. *Duties of corporation treasurer and clerk.* The duties of treasurer and clerk of such township shall be performed by the clerk and treasurer of the corporation; and all moneys collected or authorized by law to be paid to the township treasurer shall be paid to such corporation treasurer.

SEC. 478. *Township property to vest in council, etc.* All property, real and personal, together with all moneys and credits, books,

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[1] Act of April 8, 1856 (4 Curwen, ch. 1632.)

An action may be maintained by the directors of a county infirmary against a city of the second class in another county (where the boundaries of such city are identical with those of a township, and such township has thereby become merged in the city), for expenses incurred in furnishing temporary relief to, and removing an insane pauper, having a legal settlement in such city.

Such action may be brought, either in the county for which the plaintiffs are infirmary directors, and where the relief was furnished, or in the county in which the city, defendant, is situated. *Directors of Muskingum Co. Infirmary* v. *Toledo*, 15 O. S. 409.

vouchers, records, files, accounts, documents and bonds of an official character, in the possession or under the control of said township trustees, township clerk or township treasurer, or either of them, whose offices are thus abolished, shall vest in the council; and such township officers shall, when their offices have ceased by operation of this act, forthwith deliver over to the council of the corporation a full statement of their accounts, together with the property, moneys, credits, books, records, accounts, files, vouchers, official bonds and documents aforesaid.

SEC. 479. *Suits, judgments, etc., to be transferred to corporation.* All suits pending and judgments recovered by or against any such township, together with all rights, interests, claims and demands, in favor of and against the same, may be continued, prosecuted, collected or enforced by or against the corporation; and all suits authorized by law to be brought by or against such township or township trustees, not caused by their non-compliance with this act, shall be prosecuted by or against the corporation.

SEC. 480. *Change of boundaries in certain cases.* If the limits of any corporation do not comprise the whole territory of any established township in which the same is situate, or if they include territory comprised in more than one township, and the council of such corporation shall in either case, by a vote of a majority of the members thereof, petition the board of county commissioners of the proper county for a change of township boundaries, such county commissioners may, on the presentation of such petition with the proceedings of the council duly authenticated, at any regular or adjourned session, so change the boundaries of the township or townships in which the principal part of the corporation is situated, as to make the same identical, in all respects, with the boundaries of the corporation.

SEC. 481. *Annexation of surplus territory.* In making such change, said board of county commissioners shall annex the surplus territory, if any, so cut off from the township thus reduced to limits identical with the corporation, to any township or townships contiguous; or if such surplus shall contain sufficient territory, may erect the same into a new township, as in their opinion will best promote justice and the public convenience.

SEC. 482. *When limits of two or more townships shall constitute but one, etc.* Where the limits of more than one township, portions of which are comprised within the corporation limits, have been reduced in the manner above provided, the territory embraced within the corporation limits shall thereafter constitute one township, and bear the name of that township within the corporation limits having the largest area of territory.

SEC. 483. *Application for change of boundaries in certain cases.* Where the corporation is situate in two or more counties, the application authorized by section four hundred and eighty, may be made to the county commissioners of the county in which the largest portion of the territory of the corporation is contained.

CHAPTER XLIII.

TWO DAYS' LABOR ON THE STREETS—ROAD TAX.[1]

SECTION.
484. Labor on streets, who are liable, etc.
485. Penalty, etc., for refusal to perform labor.
486. Road districts and street commissioners.
487. Road taxes, how collected and applied.
488. Attachment of contiguous territory for road purposes.
489. Collection of fines, forfeitures, etc.
490. Exemption from provisions of this chapter.

SEC. 484. *Labor on streets, who are liable, etc.* The council of any incorporated village or city shall have power to require each able-bodied male person between the ages of twenty-one and fifty-five years, resident within the corporation, or within any contiguous territory that shall be attached thereto for the purposes of this chapter as hereinafter provided, to perform in each and every year two days' labor upon the streets and alleys of such corporation, and upon the public roads or highways, or parts thereof that lie within the contiguous territory so attached as aforesaid; which labor shall be in lieu of the two days' labor required under the present laws regulating roads and highways.

SEC. 485. *Penalty, etc., for refusal to perform labor.* Upon refusal to perform such work under the proper street commissioner, or other officer appointed by the council, the delinquent shall be liable to the same fines, penalties and forfeitures as are provided by law against persons refusing to perform the two days' labor upon the roads and highways in other cases; and the same shall be recovered in the name of the corporation before the mayor thereof.

SEC. 486. *Road districts and street commissioners.* The council shall have power to form road districts within the limits of the corporation and contiguous territory attached as aforesaid, and to appoint suitable street commissioners, or other proper officers, for any length of time, not exceeding two years, for such districts, or for the whole limits of such corporation and the contiguous territory attached as aforesaid, who shall be governed in the performance of their duties by the by-laws and ordinances of the corporation.

SEC. 487. *Road taxes, how collected and applied.* No tax assessed upon property within the territory attached to any corporation as aforesaid, shall be applied otherwise than within the territory in which the same is assessed; and all taxes charged for road purposes on the property within the limits of the corporation, or the territory so attached, and collected by the county treasurer, shall be paid over to the corporation treasurer, to be specially appropriated by the council to street and road purposes within the corporate limits and territory so attached; and the trustees of the township in which said territory is located and the council may agree upon a different distribution or division of said funds.

SEC. 488. *Attachment of contiguous territory for road purposes.*

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[1] Act of April 5, 1859 (4 Curwen, ch. 2025); April 16, 1867 (64 O. L. 241.)

It shall be the duty of the council and the trustees of townships respeetively in whieh any sueh corporation shall be situated, as soon after the passage of this aet as praetieable, and when from the sparseness of population the publie interest shall require it, to attaeh to the corporation any territory lying contiguous thereto for the purposes mentioned in this ehapter.

SEC. 489. *Collection of fines, forfeitures, etc.* The said street commissioners, or other proper offieers, shall have power to eollect by suit, all fines, forfeitures and penalties arising under the provisions of this chapter; and they are hereby authorized and required, before their annual settlement with the eouneil, to proseeute to final judgment all persons neglecting or refusing to comply with the provisions of this ehapter, from whom, in the opinion of sueh street commissioners, or other proper offieers, sueh fine, penalty or forfeiture can be eolleeted.

SEC. 490. *Exemption from provisions of this chapter.* All persons who are, or may be exempt from performing labor on the public highways by any law of this state, shall not be subject to the provisions of this ehapter.

CHAPTER XLIV.

VACATING STREET OR ALLEY.[1]

SECTION.
491. Streets, may be vacated on petition, etc.
492. Notice of petition to be published.
SECTION.
493. Effect of order of vacation, etc.

SEC. 491. *Streets may be vacated on petition, etc.* The eouneil of any eity or ineorporated village, on petition filed by any person or persons owning any lot or lots in the eorporation, praying that any street or streets, alley or alleys, in the immediate vieinity of sueh lot or lots, may be vaeated or narrowed, may, upon hearing and being satisfied that there is good eause for sueh vaeation or narrowing, and that it will not be detrimental to the general interest, and that the same should be made, deelare sueh street or streets, alley or alleys, vaeated or narrowed.

SEC. 492. *Notice of petition to be published.* No street or alley shall be vacated or narrowed as aforesaid, unless notiee of the pendeney and prayer of the petition shall be given by publishing the same in some newspaper, published in sueh eorporation, for six eonseeutive weeks immediately preeeding aetion on sueh petition; or in ease no newspaper is published in the eorporation, by posting sueh notice in three publie places therein, six weeks immediately preceding such action.

SEC. 493. *Effect of order of vacation, etc.* The order of the eouneil, vaeating or narrowing any street or alley whieh has been dedicated to public use by the proprietor, shall, to the extent to which

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[1] Aet of Mareh 11, 1853, § 13, as amended April 29, 1854; 4 Curwen, ch. 1470.

the same is vacated or narrowed, operate as a revocation of the acceptance thereof by the council; but the right of way and easement therein of any lot-owner shall not be impaired thereby.

CHAPTER XLV.

DAMAGES FOR EXCAVATIONS.[1]

SECTION.
494. Damages by excavation to be recovered by civil action.
495. Depth of excavation allowable.

SEC. 494. *Damages by excavation to be recovered by civil action.* If the owner or possessor of any lot or land in any city or incorporated village, shall dig or cause to be dug, any cellar, pit, vault or excavation, to a greater depth than nine feet below the curb of the street on which such lot or land abuts, or if there be no curb, below the surface of the adjoining lots; and shall, by such excavation, cause any damage to any wall, house or other building, upon the lots adjoining thereto, the said owner or possessor shall be liable, in a civil action, to the party injured, to the full amount of the damage aforesaid.

SEC. 495. *Depth of excavation allowable.* Such owner or possessor may dig, or cause to be dug, any such cellar, pit, or excavation, to the full depth of any foundation walls of any buildings upon the adjoining lots, or to the full depth of nine feet below the established grade of the street whereon such lot abuts, without reference to the depth of adjoining foundation walls, without incurring the liability prescribed in this chapter.

CHAPTER XLVI.

BOARD OF IMPROVEMENTS.[2]

SECTION.
496. Composition of board of improvements.
497. Duties of board of improvements.
498. Powers of the board.
499. Clerk of board, his duties, etc.
500. Superintendents of improvements.
501. No improvements without recommendation of board.
502. Powers and duties of board.
503. Petitions to be presented to board, etc.
504. Special boards of improvements in villages.
505. Powers and duties thereof.
506. No compensation allowed.

SEC. 496. *Composition of board of improvements.* Whenever the council of any city shall establish a board of improvements, such board shall be composed of the mayor, the civil engineer, the street commissioner, the chairman of the committee on streets of the city council, and one resident freehold elector of the corporation, to be appointed by the mayor, with the consent of the council, for such time as may by ordinance be provided.

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1 Act of April 28, 1854; 4 Curwen, ch. 1462.

2 Act of 1852, § 105; April 27, 1868 (65 O. L. 110); April 3, 1867 (64 O. L. 106.)

Sec. 497. *Duties of board of improvements.* It shall be the duty of the board to supervise the lighting, cleaning, repairing and improving of all streets, alleys, avenues, lanes, public squares and parks, public wharves and landings, market-houses and spaces, bridges, sewers, culverts and ship channels, navigable streams, and water-courses, within the corporation, or the control of the council thereof.

Sec. 498. *Powers of the board.* It shall have power to adopt such rules and regulations for its government as it may deem necessary and expedient to effect the purpose of its organization, not inconsistent with the ordinances of the corporation or constitution or laws of the state.

Sec. 499. *Clerk of board, his duties, etc.* It shall have power to appoint a clerk, whose duty it shall be to attend all meetings of the board, and keep a complete journal of all its proceedings, orders and resolutions, which journal shall be at all times open for public inspection. It shall also be the duty of the clerk to perform such other duties as the board shall from time to time require; and he shall be entitled to receive such compensation for his services as the council, upon the recommendation of the board, may determine.

Sec. 500. *Superintendent of improvements.* Such board shall also have power to employ such person or persons to superintend and perform the work of making improvements as the interests of the corporation demand; and the services of such employes shall be paid, on the recommendation of the board, in such manner as the council may determine.

Sec. 501. *No improvements without recommendation of board.* No improvement or repairs shall be ordered or directed by the council for any street, lane, alley, avenue, park, public grounds, market-houses or spaces, bridges, sewers, culverts, navigable streams, water-courses, ship channels, public wharves or landings of the corporation, except on the report and recommendation of the board of improvements.[1]

Sec. 502. *Powers and duties of board.* The board shall exercise such powers and perform such duties in the superintendence and construction of public works and improvements constructed by authority of the council or owned by the corporation, and perform such other duties relating to the public improvements and the enforcement of ordi-

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[1] In an action by the contractor against the owner of property to recover an assessment for paving, etc., it is not necessary that the petition on appeal in the Court of Common Pleas should show that the Board of City Improvements reported an ordinance to the city council for the paving of the street; nor that the determination to assess the value of the work upon the lots bordering upon the street was made before the work was done. And it is no ground of objection that the action before the magistrate was simply for a money demand, whereas the petition prayed for a sale of the real estate on ascertaining the amount due. Cox, J., in *Leonard* v. *Smith*, Hamilton Common Pleas, following *French* v. *Lowry*, Hamilton District Court. MS.

To the same effect is *Reynolds* v. *Hammond*, Superior Court of Cincinnati, General Term, 1868. MS.

nances relating to the streets of the corporation, as the council may from time to time prescribe.

SEC. 503. *Petitions to be presented to board, etc.* All petitions for improvements from owners of property shall be presented to the board, who shall report from time to time to the council when any such improvement is necessary or proper; and when any assessment is required, they shall report the same, and an estimate of the amount to be assessed, and the council shall take such action thereon, as may be deemed proper.

SEC. 504. *Special boards of improvements in villages.* The council of any incorporated village, in which there is no civil engineer or street commissioner chosen by the electors, shall have the power to appoint two resident freehold electors of the corporation, who shall hold their office for two years, and who, with the mayor, shall constitute the board of improvements of such corporation.

SEC. 505. *Powers and duties thereof.* Such board shall have the same powers and perform the same duties in respect to the incorporated village as are invested in and required of the board of city improvements under the preceding sections of this chapter.

SEC. 506. *No compensation allowed.* The board of improvements shall not be entitled to receive any compensation for their services.

CHAPTER XLVII.

APPROPRIATION OF PRIVATE PROPERTY BY MUNICIPAL CORPORATIONS FOR PUBLIC USES.[1]

SECTION.
507. Purposes for which private property may be appropriated.
508. Appropriation for right of way, etc.
509. Definitions.
510. Appropriation of turnpikes or plank roads.
511. Concurrence of two-thirds of council necessary for condemnation, etc.
512. Declaration of purpose to appropriate, etc.
513. Application to court, etc.
514. Personal service of notice to owners, etc.
515. Court to set a time for inquiry, etc.
516. Special term of court may be held.
517. Jurors in probate court, how drawn, etc.
518. Inquiry, etc., to be at time appointed.
519. A view of the premises may be required.
520. Guardian ad litem for infants, etc.
521. Fuller description of property may be required.
522. Assessment, how made.
523. Verdict in whole or in part.
SECTION.
524. Order as to payment or deposit.
525. Time and manner of delivery of property.
526. Costs, how to be paid.
527. No delay from doubt of ownership.
528. Interested parties may give bond, etc.
529. Review, when and how it may be had.
530. When execution of order may be suspended.
531. Appeal to court of common pleas.
532. Notice of appeal, and guarantee.
533. As to appeal by guardian, married woman, etc,
534. Probate judge shall furnish transcript, etc.
535. Original papers may be used.
536. Corporation shall not appeal.
537. Effect of neglect to take possession in six months.
538. Provisions of this chapter applicable to villages.

SEC. 507. *Purposes for which private property may be appropriated.* Each city and incorporated village shall have power to ap-

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[1] The cases in relation to the appropriation of private property to the use of corporations, municipal and others, are collected in THE OHIO DIGEST, pp. 197, 205, 229, 506, 512, 548, 579. And see *Jackson* v. *Jackson*, 16 O. S.

propriate, enter upon and hold real estate within its corporate limits, for the following purposes; but no more shall be taken or appropriated than is reasonably necessary for the purpose to which it is to be applied:

1. For opening, widening, straightening and extending streets, alleys and avenues
2. For market-spaces.
3. For buildings and structures required for the use of the fire department.
4. For public halls and necessary offices.
5. For prisons.
6. For infirmaries.
7. For work-houses.
8. For houses of refuge and correction.

For the four purposes last above named the right to appropriate may be exercised any-where within the county in which the corporation or any part thereof is located.

9. For public hospitals.
10. For public parks.
11. For gas-works.
12. For water-works; and for this purpose the right to appropriate shall not be limited to lands lying within the limits of the corporation.
13. For school-house sites and grounds, the same having been recommended and the site selected by the board of education.
14. For public cemeteries; and for this purpose the right to appropriate shall not be limited to lands lying within the corporation. But no land shall be appropriated under this provision until the court shall be satisfied that suitable premises can not be obtained by contract upon reasonable terms, and no lands shall be appropriated upon which there may be any dwelling-house, barn, stable or other farm building; or upon which there shall be any orchard or nursery, or any valuable mineral or other medicinal spring; or any well actually yielding oil or salt-water; nor shall any land be appropriated within two hundred yards of any dwelling-house.
15. For public wharves and landings on navigable waters.

163; *Miller* v. *Graham*, 17 O. S. 1; *Hatch* v. *Cincinnati & I. R. Co.*, 18 O. S. —.

In *Harbeck* v. *Toledo*, 11 O. S. 219–222, the court recognized the soundness of these principles in a case in which was involved the power of a municipal corporation to take private property for public use: "No prerogative of sovereignty should be watched with greater vigilance than that which takes private property for public use. It should never be exercised except when the public interests clearly demand it, and then cautiously; and the requirements of the statute authorizing its exercise must be strictly pursued." * * * * "When this power is delegated by the legislature to a municipal or other corporation, its exercise is subject to the inflexible rule, that the power must be strictly pursued, and, ordinarily, it must appear to be so on the face of the proceedings." * * * "Their authority is special, limited and conditional, and must be strictly followed. The law is made for their benefit, and it is their duty to take the previous steps incumbent on them, or they are trespassers."

16. For levees to protect against floods; and for this purpose the corporation shall have power to appropriate, enter upon, and take private property lying outside of the corporate limits; and may extend and strengthen its levees and embankments along any river or stream adjacent to the limits of the corporation; and may widen the channel of such river or stream.

17. For necessary bridges.

18. For constructing, opening, excavating, improving, deepening, enlarging, straightening, or extending any canal, ship-channel or watercourse, located in whole or in part within the limits of the corporation, which is not owned in whole or in part by the state, or by any company or individual authorized by law to make such improvement.

19 For sewers, drains and ditches.

20. For public water-closets and privies.

21. For lighting any public use.[1]

Sec. 508. *Appropriation for right of way, etc.* The power to appropriate may also be exercised where it is necessary to acquire the right of way to, or additional grounds for the enlargement or improvement of any public use herein specified. And whenever material is required for the construction, improvement, or repair of any such use, the corporate authorities are empowered to enter, appropriate and take the same; and for this purpose they may go outside the corporate limits.[2]

Sec. 509. *Definitions.* The terms "land" and "real estate," as used in this chapter, shall be regarded as including rights and easements of an incorporeal nature.[3]

Sec. 510. *Appropriation of turnpikes or plank roads.* When any turnpike or plank road terminates within the corporate limits, any portion of such turnpike or plank road so included therein, shall become a public street of the corporation, and shall be maintained and kept in repair as other streets; and the council may cause the same to be condemned and appropriated for use as such, according to the provisions of this chapter.[3]

Sec. 511. *Concurrence of two-thirds of council necessary for condemnation, etc.* No improvement requiring proceedings for the condemnation of private property, shall be made without the concurrence in the by-law, ordinance or resolution directing the same, of two-thirds of the whole number of the members elected to the council.[4]

Sec. 512. *Declaration of purpose to appropriate, etc.* When it shall be deemed necessary by any municipal corporation to appropriate private property, as above provided, the council shall, by resolution,

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[1] Act of 1852, § 26, as amended May 1, 1858 (4 Curwen, ch. 1880); April 6, 1866 (63 O. L. 152); March 11, 1867 (64 O. L. 45); April 8, 1865 (62 O. L, 101); April 10, 1867 (64 O. L. 123); March 28, 1864 (61 O. L. 71); April 29, 1854 (4 Curwen, ch. 1463); February 9, 1863 (60 O. L. 6); April, 11, 1867 (64 O. L. 124.)

[2] Act of 1852, § 26.

[3] Act of April 6, 1866; 63 O. L. 187.

[4] Act of 1852, § 104, March 29, 1866; 63 O. L. 61.

declare such intent, defining therein the purpose of the appropriation, and setting out a pertinent description of the property designed to be appropriated. On the passage of such resolution, the yeas and nays shall be taken and entered on the record of the proceedings of the council.[1]

SEC. 513. *Application to court, etc.* Upon the passage of the resolution by the requisite majority, application in writing shall be made to the court of common pleas of the proper county, or to the judge thereof, in vacation, or to the probate court of the proper county, which application shall describe as correctly as may be the property to be taken, the object proposed, and shall name the owners of the property, and of each lot or parcel thereof, known.[1]

SEC. 514. *Personal service of notice to owners, etc.* Notice of the time and place of such application shall be given personally, in the ordinary manner of serving legal process, to all the owners of the property sought to be appropriated, resident in the state, whose place of residence is known; and to all others, by publishing a copy of the application, with a statement of the time and place at which it is to be made, for three weeks next preceding the time of the application, in some newspaper of general circulation in the county.[1]

SEC. 515. *Court shall set a time for inquiry.* If it shall appear to the court or judge that such notice has been served five days before the time of the application, or has been published as above provided, and that such notice is reasonably specific and certain, the court or judge may set a time for the inquiry into and assessment of compensation, by a jury of twelve men, unless all the parties shall agree upon a less number, who shall be duly sworn to discharge that duty.[2]

SEC. 516. *Special term of court may be held.* If the application be in the court of common pleas, and such court shall not be in session on the day fixed for the inquiry and assessment of compensation, the judge of the court of common pleas of the subdivision in which the property is situated, or in case of his absence, interest or disability, any other judge of said court within the district shall hold a special term of said court, for the purpose of hearing and determining such inquiry and assessment, and shall direct a jury to be summoned for the purpose of making such inquiry, in the same manner that petit jurors are summoned in the court of common pleas for other purposes.[2]

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[1] Act of 1852, § 27, April 3, 1856; 4 Curwen, ch. 1567.

The power conferred upon a municipal corporation to take private property for public use, must be strictly followed; and, therefore, where the statute required the corporation as a substitute for personal service upon the owners, to publish "a copy of the application with a statement of the time and place at which it is to be made," the publication of a notice of the time and place for making the application, describing therein the property and the purposes for which it is to be taken, but not accompanied by a "copy of the application," is not a compliance with this statutory prerequisite, and does not confer upon the court or judge authority to make an order appropriating the lands. *Harbeck* v. *Toledo*, 11 O. S. 219; *D. & W. R. R. Co.* v. *Marshall*, 11 O. S. 497.

[2] Act of 1852, § 27.

SEC. 517. *Jurors in probate court, how drawn, etc.* If the application be in the probate court, the clerk of the court of common pleas of the county shall, on the day fixed for the application, in the presence of the probate judge, draw twelve names, or such less number as may be agreed upon by the parties, from the box containing the names of persons selected as jurors for the county; and the persons so drawn shall be summoned and serve as the jury, unless excused or set aside by the court for good cause shown. If, for any cause, the panel is not full, the probate judge shall fill the same from the bystanders.[1]

SEC. 518. *Inquiry, etc., to be at the time appointed.* The inquiry and assessment shall be made at the time appointed, unless, for good cause, continued to another day.[1]

SEC. 519. *A view of the premises may be required.* A view of the premises shall be ordered, when desired by the jury, or demanded by any party interested in the proceeding.[1]

SEC. 520. *Guardian ad litem for infants, etc.* If, at the time of such application, it shall appear that any of the owners of the property sought to be appropriated are infants, or insane, and that they have no guardian, a guardian ad litem shall be appointed to act in their behalf.[1]

SEC. 521. *Fuller description of property may be required.* The corporation may be required to file a more full and accurate description of the property to be taken, and the object proposed, and maps, plats and surveys, if in the opinion of the court, the same shall be necessary and proper.[1]

SEC. 522. *Assessment, how made.* The assessment shall be in writing, signed by the jury, and shall be made so that the amount payable to each owner may be ascertained, either by allotting it to each owner by name, or on each lot or parcel of land; and the inquiry and assessment shall, in other respects, be made by the jury, under such rules and regulations as shall be given by the court.[1]

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[1] Act of 1852, § 57.

A railroad company having located its road, has no right to relocate a part of the road on the property of an individual, nor to use a street or highway for that purpose. *Little M. R. R. Co.* v. *Naylor*, 2 O. S. 235.

An action lies as well for damages to adjoining property by stopping or impairing the travel on, to or from a street or highway, as any other damage that can be done to property, although the property injured may not be touched by the obstruction. *Ib.*

A corporation seeking to appropriate private property to public uses may discontinue the proceeding for assessment of compensation, at any time, at least before the submission of the inquiry to the jury. *D. & W. R. R. Co.* v. *Marshall*, 11 O. S. 497.

Where the legislature, in the constitutional exercise of the right of eminent domain, authorizes an act, the necessary consequence of which is to injure the property of another, and at the same time prescribes the particular mode in which the damages shall be ascertained and compensated, giving to the injured party the right to resort to the same, the person or corporation acting under such authority, and within the scope thereof, is not a wrong-doer, nor liable to an action for a tort, but must be proceeded against under the statute remedy. *Little M. R. R. Co.* v. *Whitacre*, 8 O. S. 590.

Sec. 523. *Verdict in whole or in part.* The jury shall be sworn to make the whole inquiry and assessment, but may be allowed to return a verdict as to part, and be discharged as to the rest, in the discretion of the court; and in case a jury shall be discharged from rendering a verdict in whole or in part, another shall be drawn and empanneled at the earliest convenient time, who shall make the whole inquiry and assessment, or the part not made, as the case may be.[1]

Sec. 524. *Order as to payment or deposit.* So soon as the amount of compensation which may be due to the owners of the property to be taken, or to any of them, shall have been ascertained by the jury, the court shall make such order as to its payment or its deposit, as shall be deemed right and proper in respect to the time and place of payment or deposit, or to the persons entitled to receive payment, and the proportion payable to each, and may require adverse claimants for any part of the money or property, to interplead, so as fully to settle and determine their right and interests, according to equity and justice.[2]

Sec. 525. *Time and manner of delivery of property.* The court may direct the time and manner in which possession of the property condemned shall be taken or delivered, and may, if necessary, enforce any order giving possession.[2]

Sec. 526. *Costs, how to be paid.* The costs occasioned by the inquiry and assessment shall be paid by the corporation, and the other costs which may arise shall be charged or taxed as the court in its discretion may direct.[2]

Sec. 527. *No delay from doubt of ownership.* No delay in making an assessment of compensation, or in taking possession, shall be occasioned by any doubt which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners; but in such cases the court shall require a deposit of the money allowed as compensation for the whole property, or the part in dispute; and in all cases, as soon as the corporation shall have paid the compensation assessed, or secured its payment by a deposit of money under the order of the court, possession of the property may be taken, and the public work or improvement progress.[2]

Sec. 528. *Interested parties may give bond, etc.* Any person or persons interested in the appropriation of private land for any street, alley or public highway, may, before or after the passage of an ordinance for the opening of such street, alley, or public highway, or before or after application to the court, execute his, her or their bond, payable to the corporation, to the acceptance of the council, conditioned for the payment of all damages which may be assessed by the jury; and such bond shall be good in law, and if such bondsmen shall make payment or deposit according to the order of the court, then such street,

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[1] Act of 1852, § 27.

[2] Act of 1852, § 28, as amended April 17, 1857; 4 Curwen, ch. 1787.
A city council in passing an ordinance to appropriate land for a street does not act judicially, nor is the assessment of damages by the committee appointed for that purpose a judicial act. *McMicken* v. *Cincinnati*, 4 O. S. 394.

alley or highway shall be opened; or the corporation may, at its discretion, make such payment or deposit, and collect by law the amount of such damages of such bondsmen, with or without costs, as the court may direct.[1]

SEC. 529. *Review, when and how it may be had.* Where the proceeding was in the court of common pleas, whether upon an original application therein, or upon an appeal from the probate court, any party interested in such inquiry and assessment, who shall feel aggrieved by the finding of the jury, or the order of the court, may have the part thereof in which such party may be interested and feel aggrieved, reviewed in the district court, by filing a petition for that purpose in the court of common pleas during the term at which the finding or decision complained of shall have been made; and it shall be the duty of the court of common pleas to report, in the nature of a bill of exceptions, the facts necessary to show the ground of the finding or decision; and said petition and report, or a transcript thereof, being filed in the district court, (which shall be done on or before the first day of the next term thereof,) the matter shall be heard and determined; and if the court shall find that right and justice has not been done, a new assessment may be ordered by a jury in that court, which shall be made without delay, at the same term, if practicable; or such other final order or judgment shall be made as may be deemed proper and equitable.[2]

SEC. 530. *When execution of order may be suspended.* When such petition shall be filed, the court of common pleas may suspend the execution of any order which may have been made, on such terms as may be deemed proper, and may require a bond, with security for the payment of any damages or costs which may be thereby occasioned; but in all cases where the municipal corporation shall pay, or secure by a deposit of money, the compensation assessed by the jury, and shall give such security as may be deemed adequate to pay any further compensation, and all damages and costs which may be adjudged in the district court, the right to take and hold the property condemned shall not be affected by any such review.[2]

SEC. 531. *Appeal to court of common pleas.* Where the proceeding was had in the probate court, any party interested in the inquiry and assessment may take an appeal to the court of common pleas; and thereupon the same proceedings shall be had as if the application had been originally made in that court, except that the corporation shall not be required to give notice of its application, and the inquiry and assessment shall be limited to the case of the party taking the appeal. The court shall make such order for the payment of the costs accruing upon the appeal as may seem equitable and just.[3]

SEC. 532. *Notice of appeal and undertaking.* The party desirous

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[1] See note 2, ante, p. 130.

[2] Act of 1852, § 29.

[3] Act of May 1, 1854 (4 Curwen, ch. 1496), as amended February 7, 1856; (4 Curwen, ch. 1529); February 28, 1866 (63 O. L. 26.)

of appealing, shall, within ten days after the date of the final order determining the rights of such party, file with the probate judge notice of his or her intention to appeal; and shall further, within twenty days after the making of said order, give a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the probate judge, conditioned that the party appealing shall abide by and perform the order, judgment or decree of the appellate court, and pay all costs or moneys which may be awarded against said party by such court.[1]

SEC. 533. *As to appeal by guardian, married woman, etc.* When the appeal is taken by any person as guardian, executor or administrator, who has given bond as such to the state, no undertaking shall be required from such guardian, executor or administrator. When an appeal is taken by a married woman, it shall be sufficient if the undertaking is signed by her surety or sureties.[1]

SEC. 534. *Probate judge shall furnish transcript, etc.* The probate judge shall, upon the giving of the undertaking as above provided, or upon the filing of notice of the intention to appeal where no undertaking is required, make out an authenticated transcript of the docket or journal entries and of the order or decision appealed from, which shall be forthwith filed with the clerk of the court of common pleas by the person appealing, and the appeal shall thereupon be considered perfected. If the transcript is not filed within thirty days after the date of the undertaking, or of the filing of the notice of intention to appeal where no undertaking is required, the party shall be deemed to have waived an appeal.[2]

SEC. 535. *Original papers may be used.* The original papers pertaining to the proceeding may be used upon the hearing or inquiry in the court of common pleas, and shall be transmitted by the probate judge for that purpose.[2]

SEC. 536. *Corporation shall not appeal.* The municipal corporation shall have no right of review or appeal.

SEC. 537. *Effect of neglect to take possession in six months.* Whenever a municipal corporation shall make an appropriation of land for any purpose specified in this chapter, and shall fail to pay for or take possession of the same within six months after the assessment of compensation shall have been made, as above provided, the right of such corporation to make such appropriation on the terms of the assessment so made, shall cease and determine; and any land so appropriated shall be relieved from all incumbrance on account of the proceeding in such case or the resolution of the council making the appropriation; and the judgment or order of the court, directing such assessment to be paid, shall cease to be of any effect, except as to the costs adjudged against the corporation.[2]

SEC. 538. *Provisions of this chapter applicable to villages.* In cases in which incorporated villages for special purposes are authorized

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[1] See note 3, ante, p. 131.

[2] Act of 1854 (4 Curwen, ch. 1496); Act of March 14, 1867, § 8 (64 O. L. 52.)

to appropriate private property, the proceedings shall conform, as far as practicable, to the provisions of this chapter.[1]

CHAPTER XLVIII.

GENERAL RULES RELATIVE TO IMPROVEMENTS AND SPECIAL ASSESSMENTS.

SECTION.
539. For what improvements general tax shall be levied.
540. Where concurrence of two-thirds of council requisite.
541. Assessments on owner of life estate, etc.
542. Rules of assessment.
543. Assessment never to exceed fifty per cent. of value.
544. What shall be estimated as cost of improvement.
545. Lien from date of assessment.
546. Amount of assessment and penalty recoverable by suit, etc.
547. How lien may be enforced.
548. Lien as to non-resident owner.
549. Lien may be enforced against all owners, or a part.

SECTION.
550. Costs in case of error or defect in proceedings.
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552. Proceedings upon reassessment.
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557. Where new action may be commenced.
558. Collection of assessment in advance.
559. As to deficiency or excess of assessment.
560. As to change of grade, after being once established.
561. As to added territory.
562. Proceedings in making improvements or repairs.

SEC. 539. *For what improvements general tax shall be levied.* For the payment of the cost of the following improvements, including the necessary real estate, the council shall levy and assess a tax upon the general duplicate of all the real and personal property subject to taxation within the limits of the corporation, which levy and assessment shall be by the clerk of the corporation certified to the auditor of the county, and by the auditor charged in the duplicate against said taxable property, and collected as other taxes; that is to say, for public halls and necessary offices, for structures for the fire department, for water-works, market houses and spaces, cemeteries, parks, infirmaries, hospitals, gas-works, prisons, houses of refuge and correction, work-houses, public privies, and rights of way, wharves and landings on navigable waters, levees and embankments.[2]

SEC. 540. *Where concurrence of two-thirds of council requisite.* No public improvement provided for in chapters forty-nine and fifty, the cost or part of the cost of which is to be specially assessed on the owners of adjacent property, and no order appointing assessors of damages, or confirming their report, shall be made without the concurrence of two-thirds of the whole number of the members elected to the council, unless two-thirds of the owners to be charged shall petition in writing therefor.[3]

SEC. 541. *Assessments on owner of life estate, etc.* Where a special assessment is made on real estate subject to a life estate, such

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1 See, ante, ch. 5.

2 Act of February 21, 1866; 63 O. L. 22.

3 Act of 1852, § 104; March 11, 1853, § 14; April 8, 1856, § 6; May 1, 1858, § 2; March 29, 1866 (63 O. L. 61); February 19, 1866 (63 O. L. 18); April 5, 1866 (63 O. L. 144.)

assessment shall be apportioned between the owner of the life estate and the owner of the fee in proportion to the relative value of their respective estates, such proportion to be ascertained upon the principles applicable to life annuities.[1]

SEC. 542. *Rules of assessment.* In making a special assessment according to valuation, the council shall be governed by the assessed value of lots where the land is subdivided and the lots are numbered and recorded. Where there are lots which are not assessed for taxation, or there is land which is in bulk and not subdivided into such lots, the council shall fix the value of such lots or the front of such land to the usual depth of lots, by the average of two blocks, one of which shall be next adjoining, on each side. If there are no blocks so adjoining, the council shall fix the value thereof, so that it will be a fair average of the assessed value of other lots in the neighborhood.[2]

SEC. 543. *Assessment never to exceed fifty per cent. of value.* In no case shall the tax specially levied and assessed upon any lot or land for any improvement, amount to more than fifty per centum of the value of such lot or land, after the improvement has been made, and all the cost thereof exceeding said per centum that would otherwise be chargeable on such lot or land, shall be paid by the corporation out of its general revenue.[3]

SEC. 544. *What shall be estimated as cost of improvement.* The cost of any improvement contemplated in this chapter, and in chapters

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[1] Act of May 9, 1868; 65 O. L. 178.

Where property was taken by a municipal corporation for a street, and a lessee for a term of years who was in the occupancy claimed damages, it was held, that the lessee was not released by such act of the municipal corporation from his liability to pay rent to the lessor, and therefore he was entitled to damages for the injury to his estate during the whole term. *Foote* v. *Cincinnati*, 11 O. 408.

[2] Original.

[3] Act of February 21, 1866; 63 O. L. 22.

The statutes authorizing municipal corporations to assess the cost of improving streets upon the lots and lands abutting thereon, in force in the year 1853 (there being no restriction as to the amount to be assessed), did not contravene section 6 of article 13 of the Constitution of 1851. *Maloy* v. *Marietta*, 11 O. S. 636.

In a case arising under the 4th section of the act of April 8, 1856, which was similar to the provision now in force, Hoadly, J., delivering the opinion of the Superior Court, in General Term, said: "The counsel for K. argue that the value of the land must be estimated by the city council after the improvement is made, and that the city is forbidden to assess upon it a greater sum than fifty per centum of this value, and the whole assessment, if there be any excess, is totally void for want of power to make it. We do not so understand the law. The object is not to fix the time and manner of ascertaining the value of the land further than to require that the value of which fifty per centum can be assessed shall include any possible increase or enhancement by reason of the improvement. Therefore, the law uses the phrase 'value to be estimated after said improvement has been made,' and the object was to furnish a rule by which the proper proportions to be paid in any case by the owner and the city should be ascertained." *McKeown* v. *Pepper*. Storer and Matthews, JJ., concurred.

forty-nine and fifty, shall include the expense of contsruction, the purchase money of real estate or of any interest therein, where the same has been acquired by purchase; or the value thereof as found by the jury, where the same has been appropriated, together with the costs and expenses of the proceeding. It shall embrace the damages assessed in favor of any owner of adjoining lands, and the costs and expenses of the assessment; also, the expense of the preliminary and other surveys; of all printing, and of publishing the notiees and ordinances required, including notice of assessment, and any other necessary expenditure.[1]

Sec. 545. *Lien from date of assessment.* All special assessments shall be payable by the owner or owners of the property assessed personally, by the time stipulated in the ordinance making the same, and shall be a lien from the date of the assessment upon the respective lots or parcels of land assessed.[2]

Sec. 546. *Amount of assessment and penalty recoverable by suit, etc.* If payment be not made by the time stipulated, the amount assessed may, together with interest, and a penalty of five per cent. thereon, be recovered by suit before a justice of the peace, or other court of competent jurisdiction, in the name of the corporation, against the owner or owners.[2]

Sec. 547. *How lien may be enforced.* The lien upon real estate may be enforced in any court having general jurisdiction, in the name of the corporation.

Sec. 548. *Lien as to non-resident owner.* In proceedings to enforce the lien, when the owner of any lot or land assessed, is a non-resident of the state, or unknown, notice shall be given by publication in the manner prescribed by law in similar cases.[2]

Sec. 549. *Lien may be enforced against all owners, or a part.* Proceedings for the recovery of the assessment, may be instituted against all the owners, or each or any number of them; or, to enforce the lien, against all the lots or lands, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or deeree shall be rendered severally or separately, for the amount assessed; and any proceeding may be severed, in the discretion of the court, for the purpose of trial, review, or appeal.[2]

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[1] Act of March 11, 1853, § 14; March 31, 1864 (61 O. L. 132); February 21, 1866 (63 O. L. 22); April 5, 1866 (63 O. L. 133.)

[2] Act of 1852, § 30: February 19, 1866 (63 O. L. 18); April 21, 1868 (65 O. L. 104); April 5, 1866 (63 O. L. 133.)

Where a petition asked for the sale of land and the recovery of a personal judgment against the owner upon an assessment levied by the city for grading and paving an alley, and the defendant was served by publication, Hoadly, J., delivering the opinion in General Term, said: "As far as the relief sought consists in a sale of the defendant's premises, the fact that the debt is less than one hundred dollars furnishes no objection to the jurisdiction of this court. A justiee of the peaee ean not take cognizance of sueh a ease. And where jurisdiction has been once rightfully aequired, full, adequate and complete relief will be furnished, even to the extent of providing a remedy, which, if sought alone, and in the first instance, the court might be incompetent to grant. Thus, in a case of the kind suggested, if a sale of the premises fails to produce funds sufficient

SEC. 550. *Costs in case of error or defect in proceedings.* If in any such action it shall appear that by reason of any irregularity or defect, whether in the proceedings of the board of improvements or of the council, or of any other officer of the corporation, or in the plans or estimates, the assessment has not been properly made against any defendant, or upon any lot or parcel of land sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred which is a proper charge against such defendant, or the lot, or parcel of land in question, render judgment for the amount properly chargeable against such defendant, or on such lot of land; but in such cases the court shall make such order for the payment of the costs as may be deemed equitable and proper.[1]

SEC. 551. *When reassessment may be ordered.* Whenever it shall appear to the council that any special assessment is invalid by reason of informalities or irregularities in the proceedings, or, when any court of competent jurisdiction shall adjudge any such assessment to be illegal, the council, whether the improvement has been made or not, shall have power to order a reassessment.[1]

SEC. 552. *Proceedings upon reassessment.* All proceedings upon such reassessment, and for the collection thereof, shall be conducted in the same manner as is provided for the original assessment.[1]

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to pay the debt, the plaintiff may have judgment for the residue, provided the action was commenced by service of process personally or at the residence. But this court can not take jurisdiction of a petition which seeks judgment in a sum less than one hundred dollars, nor grant such relief originally, even in a case where other proper relief is also sought. Nor can we render a personal judgment in any sum whatever where the service was by publication in such a case." Prayer of petition granted as far as it seeks a sale of defendant's real estate. *Bonte* v. *Marshall.* MS.

[1] Act of 1852, § 31, February 19, 1866 (63 O. L. 18); April 21, 1868 (65 O. L. 104.)

Where the corporate authorities of a city had, in pursuance of its charter, levied a local assessment on lots bounding on and near to certain streets, for the purpose of grading said streets, and, from mistake in the preliminary estimate of cost, and extraordinary expense attending the collection of said assessment, the assessment proved insufficient to discharge the cost and expenses, a subsequent amendment of the charter, authorizing a reassessment on the same lots "sufficient in amount to meet said deficiency, and the cost and expenses of such reassessment, and all other expenses incidental to said improvements," is not in contravention of any provision of the constitution of 1802, and is a valid law, binding on all property within its purview, although the owner may have acquired title intermediate the assessment and reassessment. Nor is such reassessment invalidated by the fact, that a small part of the fund to be supplied has been expended in extending the grading somewhat beyond the strict line of the improvement expressly authorized, and into intersecting streets, where such extension was necessary to afford ingress and egress to and from the street authorized to be graded. *Butler* v. *Toledo*, 5 O. S. 225.

Brinkerhoff, J., in delivering the opinion, said: "It is contended that interest on outstanding orders ought not to be included in the amount of the reassessment. The contracts for the work provide that the contractors 'shall be paid in warrants of the mayor of said city, and shall be payable only out of the fund to be collected as aforesaid.' But surely the contractors had a right to expect that the fund would be collected within

SEC. 553. *Special duty of court of common pleas.* It shall be the duty of the court of common pleas of the proper county, to exercise the jurisdiction authorized by this chapter, for the collection of

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some reasonable time; and when its collection was unexpectedly, and, with contractors, ruinously delayed, we think the contractors had a legal right to demand interest on the dishonored warrants of the city; that the city authorities had a legal right to allow interest; and that it is rightfully included in the reassessment, as one of the 'expenses incidental to said improvement.'"

"The same may be said in respect to other items—such as costs, attorney fees, printer's bill, and compensation of city officials for superintending the work, making measurements, defending suits instituted to restrain the collection of the assessment, and the levying and collection of the assessment. None of these items would have accrued had it not been for the improvement, and they are, we think, legitimately classed among the 'expenses incidental' to it."

"And, finally, it is claimed that of the $33,096.07 of the orders drawn for the cost of this improvement, the sum of $1,017.58 was on account of work done on Summit-street, east of Elm, and on the cross streets north of Summit, neither of which were embraced in the terms of either the ordinance directing the improvement or the contracts for the work. * * * But it satisfactorily appears in the evidence that the improvement in Summit-street consisted almost entirely of excavation, varying in depth from three to six feet; in consequence of which, and of the perpendicular cuttings thus made at the points of intersection with the cross streets north of it and with Elm-street, all ingress and egress to and from that part of Summit-street covered by the improvement, would have been effectually barred had not the excavations been extended somewhat into the cross streets north of Summit, and into Summit, east of Elm. Had the projected improvement been thus left, it would have been no improvement, but a detriment; and on the whole, we are satisfied, from the nature of the improvement itself, and from the small proportion of the whole amount expended on them, that these extensions of the excavations beyond the strict line of the main work, were substantially and properly part and parcel of the main work, rather than improper and unauthorized departures from it."

In the act of April 5, 1866 (63 O. L. 133), it is provided that when it shall be deemed necessary by the council of any city embraced in that act, to make the improvements therein mentioned, it shall be the duty of the council to declare by resolution the necessity of such improvement, which resolution shall be published as specified in the act, briefly describing the character of such improvement, and referring to the plans, etc. The act further provides that persons claiming damage on account of the proposed improvement, must file their claims with the city clerk, within two weeks after the publication is completed, or be taken to have waived them, and that "it shall be lawful for the city council, in their discretion, to provide by ordinance for such" improvement. *Held*, that the adoption of the resolution declaring the improvements necessary, and the publication of the same, as required in the act, are conditions precedent to the exercise of the authority to pass a valid ordinance for the improvements, or make an assessment on the property adjoining to pay for them. The failure to comply with such precedent conditions is not merely an irregularity or defect in the proceedings provided for in the curative portion of the act. The irregularity or defect thus provided for is such as occurs in the exercise of lawful authority by the council. An act of the general assembly that operates only upon all cities in the state of the first class having at the last federal census less than one hundred thousand inhabitants, does not contravene section 26 of article 2 of the Constitution,

any charge or debt, or the enforcement of any lien, notwithstanding the amount involved shall be less than that to which the jurisdiction

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which requires all laws of a general nature to have a uniform operation throughout the state. *Welker* v. *Potter*, 18 O. S. —.

Where part only of a street is improved, the city council have power to assess the expense of making such improvement upon the lots or land abutting on the part of the street improved. Under the former law, when, in making such improvement, squares formed by the intersection of other streets are crossed and improved, the city council may, if the object of improving the squares is the improvement of such street, assess the whole expense upon the same property on which the other expenses of such improvement are assessed. *Creighton* v. *Scott*, 14 O. S. 438. But compare this with § 590.

Where a municipal corporation, by void proceedings, assess lots for the improvement of streets, the laborer can not sustain an action against the lot-owners for the amount assessed against them, but his remedy, if he have any, is against the corporation. *Harbeck* v. *Connelly*, 11 O. S. 227.

The Board of City Improvements reported an ordinance to the city council, providing that the road should be graded and macadamized "from the *Avenue House* to Millcreek bridge." The city council thereupon passed an ordinance for the grading and macadamizing of the road "from the *Western-avenue* to the Millcreek bridge," the expenses thereof to be ascertained and assessed in accordance with the general ordinances of the city. A contract was then entered into between the proper city authorities and M. & R. to do the work, "from *Western-avenue* to the Millcreek bridge," under the direction of the City Civil Engineer, or City Commissioners, who were to have entire control over the manner of doing the same. The work was done "*from the east line of Western-avenue* to the Millcreek bridge," under the superintendence of the City Civil Engineer, who made an estimate of its amount and value, agreeably to the contract. Thereupon the city council passed an ordinance assessing the amount per front foot on each front foot of the several lots of land abutting the road "from the east line of Western-avenue to the Millcreek bridge." M. & R. assigned the asssessment to plaintiffs. *Held*, that the word "from" did not necessarily exclude the avenue, although such, perhaps, would be its general construction. Still the word "from" is sometimes construed *inclusively*, according to the intention of the parties using it. In this case it will be held to include the Western-avenue, as that construction seems to have been put upon it by the parties themselves. If the assessing ordinance covers more ground than has been improved, the plaintiff in error can not object, because it operates beneficially to him, and he is liable to less assessment than he otherwise would have been. Suppose, however, the road has, in fact, been improved to the eastern line of Western-avenue, while the ordinance requiring the improvement only ordered it to be done to the western line of the avenue; this would not render the assessment wholly void; but the court would fix the rule of proportion, under the act of 1852, § 31; and, as in this case, the rateable assessment would still appear to remain the same (there being no testimony on the subject, and the presumption being that in all matters of public duty the acts of the public officer are rightly done), the court will not disturb it. *Ridenour* v. *Saffin*, 1 Handy, 464.

2. If the assessment included more property than defendant owned, the court would charge him only on the actual number of feet owned by him. *Ib.*

3. Where there is no fraud or collusion charged between the contractor and public officer, evidence will not be received to show that the work done was of less value than the contract price. The city stands, as it were, in the situation of an agent for the owners of lots who are assessed

of the court may be limited in other cases; and any court of common pleas may make such special rules as to the class of cases authorized

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to pay for the improvements contracted for; and by her acts, they are bound. *Ib.*

In February, 1865, the council of Avondale passed an ordinance giving the name "Rockdale-avenue" to the old township road, and adopted a resolution directing the Committee on Improvements to employ the Civil Engineer to make survey and estimate for its improvement. August 3, 1866, an ordinance was passed for making such improvement, and declaring the same to be necessary. This ordinance did not declare how the expense should be assessed, nor did it refer to any general ordinance determining the mode of its assessment.

The council of Avondale, in December, 1864, passed a general ordinance, providing that the costs of such improvements should be assessed upon the abutting property, per front foot. This ordinance was in force when the ordinance was passed directing the improvement of Rockdale-avenue.

The old township road was crooked, and Rockdale-avenue, as established, straightened it. The grade of the road, as made by plaintiff, differed, in one place, from the grade established by ordinance. The variation was directed by the engineer, accepted by the corporation, and was, in fact, an improvement; and the variance was held, therefore, not to be so material as to affect the validity of the assessment. *Strohman* v. *Hutchins*, Hamilton Co. District Court, 1868. MS.

2. That the general ordinance of 1864 being in force and being the law of Avondale when the improvement of Rockdale-avenue was directed, and by familiar rules, forming with it the determination of council in the matter, it must be supposed that the general ordinance was in the contemplation of the council at the time. And as they did not except this improvement from the operation of the general ordinance, it must be held that in this case they determined the assessment should be made in accordance with the general ordinance. *Ib.*

The city council passed a resolution to advertise for proposals to grade North Elm-street. Afterward they passed a resolution to readvertise, and among the proposals received was one from F. The council then passed a resolution in these words: "*Resolved*, That the clerk contract with F. for the grading of North Elm-street, from Vine-street to the north corporation line, for the sum of sixteen cents per cubic yard."

The contract was entered into and the work done. Council then passed an ordinance assessing the cost of the grading on the feet front of the property bounding on the street. *Held*, that as there was no ordinance passed directing the improvement to be made, and determining that the cost would be assessed on the owners of the property, there was not a sufficient compliance with the law to authorize council to assess the cost on the owners of the property. But that the plaintiff was entitled to recover from the city for the work done.

An informality, irregularity, or defect which it was the intention of section 31 to cure, must be considered rather an omission or neglect of something of a ministerial than of a legislative character. *Folz* v. *Cincinnati*, 2 Handy, 261.

Where it appeared that in the contract for grading and paving a street there was a clause by which the city required the contractors to remove the earth to the water-works' lot, for the improvement of that property: *Held*, that the contract was indivisible, and the city had no right to make the assessment on the front foot. The city could not attempt to get an indirect benefit for herself, and reap the fruit, by showing that the lot-owners were not injured by it. It would be an improper course, in the administration of justice, to permit the city to exert an extraordinary power against the consent of the property owners, and charge the whole

to be brought under this chapter, as will tend to expedite their disposition, and prevent unnecessary costs.[1]

Sec. 554. *Certificate and collection of unpaid assessment.* The council may order the clerk or other proper officer of the corporation to certify under his official seal any unpaid assessment or tax to the auditor of the county in which the corporation is situated, and the amount of such assessment or tax so certified shall be placed upon the grand tax duplicate of the county by the county auditor, and shall with ten per cent. penalty, to cover the interest and expense of collection, be collected with and in the same manner as state and county taxes, and credited to the corporation.[2]

Sec. 555. *Payment and application of assessments.* All assessments placed upon the duplicate of the county under the provisions of this chapter, shall, when collected, be paid to the treasurer of the corporation, and shall be applied by the council only for the purposes of the improvement for which they were made.

Sec. 556. *Duration of lien, etc.* The lien of any such assessment shall continue for the term of two years from and after the time the same is payable and no longer, unless the corporation shall, before the expiration of such time, have caused the same to be certified to the auditor of the proper county, for entry upon the tax duplicate for collection, or shall have caused the proper action to be commenced in some court having jurisdiction thereof, to enforce such lien against such lots or lands; in which case the lien shall continue and be in force so long as such assessment shall remain on the tax duplicate uncollected, or so long as such action shall be pending, and any judgment obtained under and by virtue thereof, shall remain in force and unsatisfied.[3]

Sec. 557. *Where new action may be commenced.* If an action be commenced within due time, and a judgment therein for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, a new action may be commenced within one year after such reversal or failure.[3]

Sec. 558. *Collection of assessment in advance.* The council may,

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expense upon them. *Lowden* v. *Miller*, Hamilton County District Court. MS.

Where a petition was presented to the trustees of a special road district, asking for a street to be graded thirty feet wide and macadamized fifteen feet wide, and the trustees thereupon graded the street sixty feet wide and macadamized sixteen feet wide: *Held*, that the judgment should be against the property holders for only one-half the grading and fifteen feet of the macadamizing, and against the incorporated village for special purposes for the other half of the grading and one foot of the macadamizing. *Corry* v. *Buckley*, Hamilton County District Court. MS.

[1] Act of 1852, § 33.

[2] Act of March 11, 1853, § 15, as amended April 17, 1857; February 21, 1866; 63 O. L. 22.

[3] Act of March 29, 1867; 64 O. L. 75.

if they deem expedient, cause the assessments to be collected before the work is done or contracted for.[1]

SEC. 559. *As to deficiency or excess of assessment.* Should any assessment prove insufficient to pay for the improvement and expenses incident thereto, the council may, under the limitations prescribed for such assessment, make an additional pro rata assessment to supply such deficiency; and in case a larger amount shall have been collected than shall prove necessary, the same shall be returned to the persons from whom it was collected, in proportion to the amounts collected from such persons respectively.[1]

SEC. 560. *As to change of grade, after being once established.* Whenever any street, alley, public highway, wharf or landing, within the corporation, shall have been graded, or pavements shall have been constructed in conformity to grades established by the authorities of the corporation, and the expense thereof shall have been assessed on the lots or lands bounded by or abutting upon such street, alley, public highway, wharf or landing, the owner or owners of such lots or lands shall not be subject to any special assessment occasioned by any subsequent change of grade in such pavement, street, alley, public highway, wharf or landing, unless such change is asked for by a majority of the owners of such lots or lands, but the expense of all improvements occasioned by such change of grade shall be chargeable to the general fund of the corporation.[2]

SEC. 561. *As to added territory.* The provisions of chapters forty-nine and fifty shall embrace territory added to the corporation at any time by annexation or otherwise.

SEC. 562. *Proceedings in making improvements or repairs.* When the corporation shall make any improvement or repair, provided for in this chapter and in chapters forty-nine and fifty, the cost of which will exceed five hundred dollars, it shall proceed as follows:

1. It shall advertise for bids for the period of four weeks in some newspaper in general circulation in said corporation, and two, if there are so many; and if no newspaper is published therein, then by posting up such advertisement in three public places therein; which advertisement shall be entered in full on the journal of the corporation.

2. The bids shall be filed with the clerk, sealed up, by 12 o'clock at noon of the last day as stated in the advertisement.

3. The bids shall be opened at the next regular meeting of the council, and publicly read by the clerk and entered in full on his journal.

4. Each bid shall contain the full name of every person interested in the same, and shall be accompanied by a sufficient guaranty of some disinterested person, that if the bid is accepted a contract will be entered into, and the performance of it properly secured.

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[1] Act of February 9, 1863 (60 O. L. 6); May 1, 1864 (61 O. L. 48); February 19, 1866 (63 O. L. 18); April 8, 1856 (4 Curwen, ch. 1632.)

[2] Act of April 16, 1867; 64 O. L. 215.

5. If the work bid for embraces both labor and materials, each must be separately stated with the price thereof.

6. None but the lowest responsible bid must be accepted, when such bids are for the labor or materials separately; but the council may, in its discretion, reject all the bids, or it may, in its discretion, accept any bid for both labor and material, which shall be the lowest aggregate cost of such improvement or repairs.

7. Any part of a bid which is lower than the same part of any other, shall be accepted, whether the residue of the bid is higher or not, and if it is higher, such residue shall be rejected.

8. The contract shall be between the corporation and the bidder, and the corporation shall pay the contract price for the work, when it is completed, in cash.

9. If two or more bids are equal in the whole or any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between them.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected.[1]

CHAPTER XLIX.

DAMAGES AND ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

SECTION.

563. Publication of notice of proposed improvement.
564. Filing claims for damages.
565. Determination of council as to claims for damages.
566. Jury to assess damages.
567. Proceedings of jury.
568. Finding final.
569. Costs of inquiry.
570. Assessment of damages after completion of improvement.
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575. Time allowed for proceedings.
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579. Assessment on lots not abutting on improvement.
580. As to costs for repaving streets, etc.
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582. Such levy to be certified to county auditor.

SECTION.

583. Damages for land appropriated.
584. Report of estimate of assessments.
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590. As to costs for street crossings, etc.
591. Provision for sidewalks.
592. Notice to be served on owners, etc.
593. Construction of sidewalks to turnpikes, etc.
594. Construction of sidewalks on one side only.
595. Exemption from taxation in certain cases.
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597. Cost of turnpikes, etc., owned or controlled by corporation.
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600. Right of toll not to be impaired.
601. Cost of constructing, etc., water-courses.

I.—*Notice of Proposed Improvement.*

SEC. 563. *Publication of notice of proposed improvement.* When it shall be deemed necessary, by any city or incorporated vil-

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[1] Original.

lage, to make any public improvement not otherwise specially provided for, it shall be the duty of the council to declare, by resolution, the necessity of such improvement, and to publish such resolution for four consecutive weeks in some newspaper published or of general circulation in the corporation, briefly describing the character of the proposed improvement, and referring to the plans and profiles thereof.[1]

II.—*Claims for Damages.*[2]

SEC. 564. *Filing claims for damages.* Any owner or owners of lots or lands bounding or abutting upon the proposed improvement, claiming damages therefor, shall file a claim, in writing, with the clerk of the corporation, setting forth the amount of damages claimed, together with a description of the property owned for which the claim is made, within two weeks after the expiration of the time required for the publication of said notice; and all such owners as shall fail or neglect to file their claims for damages aforesaid, within the time aforesaid, shall be deemed to have waived the same, and be forever barred from filing any claim or receiving any damages therefor.[1]

SEC. 565. *Determination of council as to claims for damages.* Upon the expiration of the time limited for filing claims for damages

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[1] Act of February 21, 1866 (63 O. L. 22); April 5, 1866 (63 O. L. 133); March 31, 1864 (61 O. L. 132); March 20, 1866 (63 O. L. 42.)

[2] In *Smith* v. *Cincinnati*, 4 O. 514, the principle was established, that where a party makes improvements on his lot, with an express view to the level and grade of the street as established by authority of the city, and the grade of the street is afterward changed by authority of the city, to the injury of the walls, etc., of the party making the improvements, the party injured may recover from the city damages to the extent of the injury, although the corporation may have acted within the scope of its authority, and without malice. The same principle was applied to a case where the value of such improvements was depreciated by reason of the change. *McComb* v. *Akron*, 15 O. 474; *Akron* v. *McComb*, 18 O. 229. And, speaking of a case of that kind, in *Crawford* v. *Delaware*, 7 O. S. 459–471, the court say: "It comes not within the letter, but manifestly within the spirit, of the provision of the Constitution, which requires compensation for property taken for public use." There it was held, that the owners of unimproved lots can not recover damages from a municipal corporation for filling, ditching or cutting down streets, being presumed to purchase with a view to a reasonable improvement of the streets. And that the owners of lots upon a street, the grade of which has not been established, must use reasonable care and judgment in making improvements with a view to a reasonable and proper grade; and the town or city will not be responsible for injuries to such improvements by afterward grading the street, if the grade, by ordinary care, could have been anticipated. But that if erections are made on a lot in accordance with an established grade, and the grade is afterward altered, and a substantial injury is thereby done to the owner of the lot, he is entitled to compensation. And that principle has been repeatedly reaffirmed. *Reeves* v. *Treasurer, etc.*, 8 O. S. 333–347; *Western Col.* v. *Cleveland*, 12 O. S. 375–378; *Cincinnati & S. G. A. Street R. Co.* v. *Cumminsville*, 14 O. S. 523–546; *Jackson* v. *Jackson*, 16 O. S. 163–168.

Where an act confers authority on a city or village to improve streets, and provides the mode of rendering satisfaction or obtaining compensation, that mode must be pursued, and an action can not be maintained,

as above provided, the council shall determine whether they will proceed with the proposed improvement or not; and also whether the

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unless that be the mode provided. *Hickox* v. *Cleveland*, 8 O. 543; *Cincinnati* v. *Coombs*, 16 O. 181–188; *Akron* v. *McComb*, 18 O. 229–232; *Hueston* v. *Eaton & H. R. R. Co.*, 4 O. S. 685; *Little M. R. R. Co.* v. *Whitacre*, 8 O. S. 590.

"All corporations act by agencies, and those agencies are composed of men who may be influenced by reprehensible motives, or tempted to do acts not warranted by law. In this case, the act is charged in the declaration to have been illegal and malicious. When a corporation acts illegally and maliciously, we conceive it ought to be made directly responsible. Such is the plain dictate of justice, and we see no technical rule of law that forbids us to act upon it." *Goodloe* v. *Cincinnati*, 4 O. 500–514.

So, municipal corporations are liable for injuries to third persons, resulting from the negligence of subordinate officers or agents acting under their authority and direction in the construction of public improvements belonging to such corporations. *Dayton* v. *Pease*, 4 O. S. 80.

But where an action was brought, not against the corporation, but persons acting under the authority of trustees of the town, for an injury to a lot, sustained by an individual from grading a street, it was held, that the defendants were not responsible individually for doing what the trustees were authorized by law to do, in any form of action. *Scovill* v. *Geddings*, 7 O. 2 pt. 211.

If damages are sustained by the owner or occupant of land, by reason of the grading of a street, the city is liable to the party injured, and the statute provides a remedy which may be pursued in such case, but until a claim for such damages is filed with the clerk of the city, and sixty days thereafter shall have elapsed without any steps being taken by the city to assess the damages, an action will not lie against the city or its agents to recover for such injury. *Ernst* v. *Kunkle*, 5 O. S. 520.

A contract made by the city with K. and R., to grade and macadamize one of its streets, may be legally assigned to other parties, although the assessment for such grading was made by the city to pay K. and R.; and a suit may, after the completion of the work, be sustained by such assignee to recover the assessment. *Ib.*

Municipal corporations are subject to the operation of the statute of limitations, in the same manner and to the same extent as natural persons; and, therefore, notorious and uninterrupted possession for more than twenty-one years, by a private individual, under a claim of right, of land dedicated to a city for streets or public squares, will bar the claim of the city to its use. [The case of *Cincinnati* v. *The Presbyterian Church*, 8 O. 298; approved and affirmed.] *Cincinnati* v. *Evans*, 5 O. S. 594.

In an action of trespass for an injury to a building occupied by the plaintiff as a store, resulting in an interruption of his business, he may recover, in addition to the damages done to the building, such further sum as will compensate him for the loss of its enjoyment while such interruption continued. *Ib.*

For this purpose it is competent to prove the nature and extent of the business, the necessity of using the building for its prosecution, and the value of such use to him during the period of interruption. *Ib.*

But in the absence of fraud or malice, or other circumstances justifying the recovery of exemplary damages, the amount of profits which might have been realized by employing his personal services and capital, in the prosecution of his business in the injured building during such interruption, can not be recovered. *Ib.*

In such case, the loss of profits does not furnish a proper rule for estimating the damages; but the loss of the use of the property, and the value of such use to the injured party, is all that can be recovered. *Ib.*

If the city, in constructing sewers, drains, or streets, increases the water-shed, or by other means brings a larger quantity of water than

claims for damages, filed as aforesaid, shall be judicially inquired into as hereinafter provided, before commencing or after the completion of

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before flowed to a given point, or in a given time, it must make provision to carry it off, and if it does not, it is responsible in damages for the result. *Darst* v. *Cincinnati*, Hamilton County District Court. MS.

In an action against the city to recover damages, wherein it appeared that the plaintiff was the owner of a lot on Main-street, running back to Bank-alley, and the city had constructed a sewer under the alley, and in the execution of this work the wall of the plaintiff, which was eleven feet below the surface, and built on a line with the alley, was rendered unsafe, the plaintiff was not permitted to recover. Judge Taft said: "So far back as *Goodloe* v. *Cincinnati*, 4 O. 500, it was decided that where a municipal corporation maliciously dug or excavated to the damage of a lot-owner, it was liable to pay for that damage; and in the same volume (*Smith* v. *Cincinnati*, 4 O. 514) it was held, that where the act was illegal, though not malicious, the corporation should pay for the injury. In *Scovill* v. *Geddings*, 7 O. 2 pt. 211, it was held, that where the damage was occasioned by an agent, acting under the authority of a corporation which had power to do the act, the agent was not liable, but the corporation was. In *Rhodes* v. *Cleveland*, 10 O. 159, it was decided that a corporation, though having the right to dig ditches and make streets, was liable, in its corporate capacity, in case of damage, the same as would be an individual owner of adjoining property. In *McCombs* v. *Akron*, 15 O. 474, the court reversed a decision of the court below, where it was held, in a case of the kind, that the city, acting within the sphere of her corporate capacity, was not liable; and that decision was affirmed, 18 O. 229. The courts in other states conformed to the English rule, and regarded the position taken by the Ohio judges as untenable. Our courts replied that, although by the English law parliament is omnipotent, and may establish a rule of that kind, yet, by our constitution and government, no private property can be taken without compensation; that where, for instance, the peculiar right a man has in a street before his own property is injured by a change of an established grade, we virtually take away his property, and should pay for it. The courts of New York, referring to the decisions in Ohio, have spoken of them as law nowhere else. Our Supreme Court, stimulated to defend itself, again took up the question in *Crawford* v. *Delaware*, 7 O. S. 459, reviewed all the authorities, and specially the principle before recognized in 10 O. 157, defining it and reasserting it with great clearness; and finally, in *Cincinnati & S. G. A. R. Co.* v. *Cumminsville*, 14 O. S. 523, they established, after much consideration, that the city, or other corporation, like an individual, shall be responsible for consequential damages, although it is acting within the scope of its powers. It will be observed that the principle determined in the latter case relates to the property an owner has in the street peculiar to himself, the right of access to his dwelling, which is taken away by a change of grade, or by a street car running to the curb: and that for the appropriation of the easement or right, the owner has a right to be paid. Here is also a case where the city is acting within the compass of her power. It is not complained that she did this act wrongfully, or that there was a want of care in putting the sewer down; nor does she change the grade or take away the property by condemnation. But the depth of the excavation undermines the wall of the party who bounds on the alley and interferes with his improvements. Now, what rule are we to observe in such a case as between the city and the private individual? The point in 10 O. 159 was, that where a city so formed its ditches as to throw the water over on a private individual, the latter would have the same right to recover as he would against an adjoining lot-owner. At first it had occurred to the court that the present case would fall under the line of decisions to which allusion has been made; but we have come to the conclusion there is a distinction, and that

the proposed improvement; and if they shall decide to proceed therewith, they shall then provide, by ordinance, for the same.

SEC. 566. *Jury to assess damages.* Upon the passage of such ordinance providing for making the improvement, it shall be the duty of the mayor of the corporation, in cases where claims for damages have been filed within the time above limited, and the council shall have determined to have the damages assessed before commencing the improvement, to make written application to the probate judge of the county within which the corporation is situated, to summon a jury of twelve disinterested freeholders, resident within the corporation, to assess the amount of damages in each particular case where claims have been filed as aforesaid; and it shall be the duty of such probate judge to direct the summoning of a jury as aforesaid, in the manner pointed out in chapter forty-seven, and fix the time and place for the inquiry and assessment of such damages.[1]

SEC. 567. *Proceedings of jury.* The jury shall be sworn to inquire into and assess the actual damages in each case separately, under such rules and instructions as shall be given them by the court, and when the jury can not agree they may be discharged, in the discretion of the court, and a new jury summoned, which shall be sworn as aforesaid.[1]

SEC. 568. *Finding final.* The finding of the jury shall be final, and there shall be no appeal.[1]

SEC. 569. *Costs of inquiry.* In all cases in which the jury shall find no damages, the costs of the inquiry shall be taxed against the claimant, and be collected on execution. In all other cases the court shall furnish to the clerk of the corporation, on application, the amount of damages and costs in each case.[1]

SEC. 570. *Assessment of damages after completion of improvements.* In all cases, when the council shall have determined to assess the damages after the completion of any improvement provided for by this act, for which claims for damages have been filed as heretofore provided, it shall be the duty of the mayor, within ten days after the completion of such improvement, to make written application to the probate judge of the county to summon a jury in the manner pointed out in chapter forty-seven, to assess the amount of damage in each particular case where claims have been filed as aforesaid; and it shall be the duty of such probate judge to fix the time and place for the in-

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we must decide against the plaintiff, on the principle of holding the city as the owner of the street, and the plaintiff as the owner of the lot adjoining, and that where one adjoining owner excavates on his own property so as to undermine the soil of the property next to him, he will be liable, if the property of his neighbor is in its natural state, and is thereby injured; but if the neighboring property has been loaded by improvements, and these improvements are considered as contributing to the injury, it is held that there is no right of recovery." *Boylan* v. *Cincinnati*, Superior Court of Cincinnati. MS.

[1] Act of February 21, 1866 (63 O. L. 22); April 5, 1866 (63 O. L. 133.)

quiry and assessment of damages, and he shall proceed in the same manner as above provided.[1]

SEC. 571. *Assessment of damages in special cases.* Where, by reason of any defect or omission, in the proceedings herein provided for, the corporation shall be liable in an action for damages to any lot or land, occasioned by making any improvement; such damages shall be ascertained and assessed by three disinterested freeholders of the corporation, to be appointed by the council.[2]

SEC. 572. *Oath of assessors of damages.* The assessors, before entering upon their official duties, shall take and subscribe an oath before a justice of the peace, or mayor, that they will well and truly, to the best of their knowledge and ability, appraise the damages which the claimants shall have suffered by reason of such improvement, and for which the corporation is liable; which oath shall be filed in the office of the clerk.[3]

SEC. 573. *Duty of assessors of damages.* They shall, within thirty days after their appointment, make said assessment, and file the same in the office of the clerk, where it shall be subject to the inspection of all claimants for damages, and all such damages shall be paid out of the corporation treasury, and within twenty days thereafter shall be by the treasurer paid or tendered to the party in whose favor the same were assessed.[3]

SEC. 574. *Costs in certain cases.* If any person shall neglect or refuse to accept the amount so assessed, and shall prosecute the corporation, and shall not recover more than the amount allowed by said assessors, such party shall pay all costs of suit.

SEC. 575. *Time allowed for proceedings.* No claimant for damages shall commence any suit until he shall have filed a claim therefor with the clerk of the corporation, and sixty days shall have elapsed thereafter, to enable such corporation to appoint assessors to assess such damages, return the same to the proper officers, and sufficient further time shall have elapsed, not exceeding twenty days after the return of such appraisal, to enable the corporation to pay the assessment.[3]

III.—*Special Assessments.*

SEC. 576. *How costs for improvements shall be assessed.* For the payment of the costs of making said improvements, the council may, by ordinance, levy and assess a tax on all the lots or lands bounding or abutting on the proposed improvement, such tax to be either in proportion to the foot front of the lot or lands so bounding or abutting, or according to the value of such lot or lands as assessed for taxation under the general law of the state, as may be equitable and as the council may in each case determine.[4]

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[1] Original.

[2] Act of May 1, 1854, 4 Curwen, ch. 1511.

[3] Act of May 1, 1854.

[4] Act of 1852, § 30; § 26, as amended May 1, 1858; April 5, 1866 (63 O

SEC. 577. *Payable in one or more installments.* The amount assessed may be made payable in one installment, or in such number of annual installments as the ordinance shall provide.

SEC. 578. *Ordinance to specify time of payment.* If the council shall determine that the costs and expense of the improvements

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L. 133); May 13, 1868 (65 O. L. 187); February 19, 1866 (63 O. L. 18); March 28, 1864 (61 O. L. 71); March 11, 1853, § 14.

See, ante, § 550, and note.

An action can not be maintained to recover back money paid with full knowledge of the facts, in discharge of an assessment made by a municipal corporation.

Where payment of a demand can not be enforced without giving the party against whom it is asserted a day in court, and there is no duress of his person or property, its payment, though made under protest, is, in law, a voluntary one. *Marietta* v. *Slocomb*, 6 O. S. 471; *Mays* v. *Cincinnati*, 1 O. S. 268. But see *Baker* v. *Cincinnati*, 11 O. S. 534.

Section 26 of the act of 1852, as amended March 11, 1853, authorizing the city council to assess the expense of improving a street, upon the lots or lands abutting thereon, in proportion to the feet front of said lots or lands, is not unconstitutional. *Northern Ind. R. R. Co.* v. *Connelly*, 10 O. S. 159.

The assessment, whether by the front feet or upon the value assessed for taxation, must be uniform, operating alike upon all the lots or lands so abutting; and the fact that one or more of the tracts may not have been benefited by the improvement, will not render such assessment invalid. *Ib.*

Lands appropriated by a railroad company for its track through a city, and crossing the improved street at right angles, and upon which the track was constructed after the work had been completed, is liable to such assessment. *Ib.*

As between the railroad company and the person performing the work (whatever may be the rights of *bona fide* mortgagees of railroad), the lands so appropriated may be sold to pay such assessment. *Ib.*

The land appropriated for a railroad track within a city, and occupied exclusively for that purpose, is land within the meaning of section 26 of said act. *Ib.*

A general ordinance of the city that assessments shall be by the front foot, is legal. And when afterward a special ordinance is passed, providing that a particular assessment shall be according to the general ordinances, this is simply specifying the mode of assessment, as the council is authorized to do. *Hanbold* v. *Barton*, Hamilton County District Court. MS.

Legislation authorizing cities and villages to levy special assessments for the purpose of improving streets, upon real estate peculiarly and specially benefited, and in proportion to such benefit, is not repugnant to any provision of the Constitution. *Hill* v. *Higdon*, 5 O. S. 243; *Marion* v. *Eppler*, 5 O. S. 250; *Ernst* v. *Kunkle*, 5 O. S. 520.

Suit was brought to recover the amount of an assessment for grading and paving with bowlder pavement in front of defendant's property. Defendant averred that he improved the street before it came under control of the city, and that plaintiffs used the curbstones, and other materials on the street, without any allowance to defendant for them; and that the ordinance directing the assessment did not provide specifically that the assessment should be made by the front foot of the lots abutting on the street, but provided that the cost should be ascertained and assessed according to the provisions of the acts of the legislature and the ordinances of Cincinnati upon the subject of special taxes. It was admitted that there was a general ordinance, enacted several years previously, providing for assessments by the front foot, unrepealed.

Held, that the defendant was not entitled to receive anything for the old

shall be payable on the completion of the same, the ordinance shall specify the time when the assessment shall be paid.

SEC. 579. *Assessment on lots not abutting on improvement.* If, in the opinion of the council or board of improvements, the same would be equitable, a proportion of the cost of making the improvement may be assessed as herein provided, upon such other lots or lands within the corporation, not bounding or abutting upon the improvement, as will, in the opinion of the council or board, be specially accommodated and benefited thereby; and said board or council shall fix the amount to be so assessed.[1]

SEC. 580. *As to costs for repaving streets, etc.* Whenever, in the opinion of the council, it shall be deemed necessary to repave any street, alley or public highway, the grade remaining unchanged, and the cost and expense thereof having been paid by the abutting property, it shall be lawful for the council to provide therefor in accordance with the provisions of this chapter; and whenever in the opinion of the council the same would be just and equitable, they shall have power to provide for the payment of one-half of the cost and expense of repaving such street, alley or public highway, by levying and assessing upon the general duplicate of all the real and personal property subject to taxation within the limits of the corporation, an amount sufficient to pay one-half the estimated cost and expense of said improvement, and the said amount shall be certified and entered upon the general duplicate and collected the same as provided in chapter forty-eight.[2]

SEC. 581. *When costs may be raised by general levy.* If, in the opinion of council or board of improvements, it would be equitable, the whole or a proportion of the cost of the improvement as may be fixed by the council or board, may be raised by the levy and assessment by the council of a tax upon the general duplicate of all the real and personal property subject to taxation within the limits of the corporation; which levy and assessment shall be certified, charged and collected as provided in chapter forty-eight.[3]

SEC. 582. *Such levy to be certified to county auditor.* Whenever the whole or any portion of any improvement authorized by this act shall pass by or through any public wharves, market-spaces, parks, cemeteries, public grounds, structures for the fire department, for wa-

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material. The street and the materials on it belonged to the city, and not to the owners of property abutting on it. The materials in the street were as much dedicated to the city as the land itself.

That it is not necessary to declare in each preliminary ordinance that the assessment is to be by the front foot. But under the laws and ordinances in force, all assessments for grading and paving streets are made by the front foot, unless the city council choose to declare a different rule, and that this is fully and lawfully determined by general ordinance. *Reynolds* v. *Hammond*, Superior Court of Cincinnati, General Term. MS.

1 See note 4, ante, p. 147.

2 Original.

3 Act of March 11, 1853.

ter-works, school buildings, infirmaries, market buildings, work-houses, hospitals, houses of refuge and correction, gas-works, public prisons or any other public structure within the limits of and belonging to such municipal corporation, it shall be lawful for the council to authorize the proper proportion of the estimated cost of such improvement to be certified to the county auditor, and entered for taxation upon the general duplicate of all the real and personal property subject to taxation within the limits of the corporation.[1]

SEC. 583. *Damages for lands appropriated.* Where any part of any lot or parcel of land is taken or appropriated for any street, alley or other highway, or public improvement, the damages assessed to the owner therefor shall be certified and entered for taxation on the general duplicate, and collected as provided in the preceding section.[1]

SEC. 584. *Report of estimate of assessments.* In all cases in which it is determined to assess the whole or any part of the cost of any improvement upon the lots or lands bounding or abutting upon the same, or upon other lots or lands benefited thereby, the council may require the board of improvements, or may appoint three disinterested freeholders of the corporation, or vicinity, to report to the council an estimated assessment of such cost on the lots or lands to be charged therewith, in proportion, as nearly as may be, to the benefits which may result from the improvement to the several lots or parcels of land so assessed, a copy of which assessment shall be filed in the office of the clerk of the corporation for public inspection.[2]

SEC. 585. *Notice of assessment to be published.* Before adopting the assessment so made, the council shall publish notice for three weeks consecutively in some newspaper of general circulation in the corporation, that such assessment has been made, and that the same is on file in the office of the clerk for the inspection and examination of any person interested therein.[3]

SEC. 586. *Objections to assessments to be filed, etc.* Any person objecting to such assessment shall file his objections, in writing, with the clerk within two weeks after the expiration of said notice; and thereupon the council shall appoint three disinterested freeholders of the corporation to act as an equalizing board.[3]

SEC. 587. *Duties of equalizing board.* On the day appointed by the council for that purpose, the said board, after taking an oath before the mayor or other proper officer, honestly and impartially to discharge their duties, shall hear and determine all objections to the assessment, and shall equalize the same, as they shall think proper; which equalized assessment they shall report to the council, who shall have power to confirm the same, or set the same aside and cause a new assessment to be made, and appoint a new equalizing board possessing

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[1] Act of February 19, 1866 (63 O. L. 18); March 28, 1864 (61 O. L. 71.)

[2] March 31, 1864 (61 O. L. 132); March 20, 1866 (63 O. L. 42); April 5, 1866 (63 O. L. 133); February 11, 1866 (63 O. L. 18.)

[3] Act of March 31, 1864; March 20, 1866; April 5, 1866; February 19, 1866; May 15, 1868.

the same qualifications, who shall proceed in the same manner above provided.[1]

SEC. 588. *Confirmed assessment final.* When such assessment is confirmed by the council the same shall be complete and final.[1]

SEC. 589. *Concurrence of two-thirds requisite.* A concurrence of two-thirds of the members of the council shall be necessary in appointing the equalizing board, and in confirming their assessment.[1]

SEC. 590. *As to costs for street crossings, etc.* Whenever the council shall determine to grade, pave, or otherwise improve any street, alley, or other highway, and such improvement crosses or intersects any other street, alley or other highway, the council shall levy and assess a tax upon the general duplicate of all the real and personal property subject to taxation within the limits of the corporation, for the amount of the estimated cost of so much of such improvement as may be included and contained in the crossing or intersection of such street, alley, or other highway, to be by the clerk certified to the auditor of the proper county, and by the auditor charged in said duplicate against said taxable property and collected as other taxes.[1]

IV.—*Sidewalks.*

SEC. 591. *Provision for sidewalks.* The council shall provide by ordinance for the construction and repair of all necessary sidewalks within the limits of the corporation.[2]

SEC. 592. *Notice to be served on owners, etc.* Whenever the council or board of improvements declare, by resolution, that certain specified sidewalks should be constructed or repaired, the mayor, upon being advised thereof, shall cause a notice to be served upon the owner or owners, or agent of the owner or owners of the property bounding or abutting on such sidewalk, of the passage of such resolution, and if such sidewalks are not constructed or repaired within sixty days from service of such notice, the council or board of improvements may have the same done at the expense of the owner or owners thereof, and such expense shall constitute a lien upon the property bounding or abutting thereon, and shall be collected in the same manner and with like penalty and interest after demand and non-payment as in other cases of improvement.[2]

SEC. 593. *Construction of sidewalks to turnpikes, etc.* The council or trustees of any municipal corporation, through or into which any turnpike or plankroad passes or enters, may, with the consent of the authority having control or direction thereof, cause to be constructed on the sides of such road, sidewalks not exceeding twelve feet in width, and gutters for the passage of water; and may also

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[1] See note 3, ante, p. 150.

[2] Act of February 13, 1853, § 17; February 21, 1866; 63 O. L. 22.

It is no violation of the Constitution for the general assembly to provide in the charter of a town that the town council may impose the duty of making sidewalks upon the lot-owners, and if any one neglect to perform the duty, the council may cause the work to be done for him, and assess the amount expended as tax upon the lot. *Bonsall* v. *Lebanon*, 19 O. 418.

cause the same when constructed to be kept in proper order and repair, and the council or trustees shall have power and authority, for the purpose of the construction or repair of such sidewalks or gutters, to assess and collect the charges and expenses thereof on the owners of lots and lands abutting on such road, and to supervise and control the said sidewalks and gutters in all respects as if said road were a street of the corporation.[1]

SEC. 594. *Construction of sidewalks on one side only.* If the board of improvements, council or trustees of any municipal corporation, shall deem it necessary to construct a sidewalk on one side only of any street, alley, turnpike or plankroad, with proper crossings from one side to the other, it shall be lawful to assess and collect the charge for constructing or repairing such sidewalk and crossings on the owners of the lots or lands abutting on both sides of such street, alley or road, in like manner as if said sidewalk had been constructed on both sides; but after a sidewalk shall have been so constructed, and the charge therefor so assessed, if it shall be deemed necessary to construct a sidewalk on the other or corresponding side of any such street, alley or road, the charge therefor shall also be assessed on the owners of the lots and lands on both sides.[2]

SEC. 595. *Exemption from taxation in certain cases.* Nothing in this chapter shall be so construed as to tax property for the purpose of constructing any sidewalk the owners of which have already constructed and maintained a sufficient sidewalk in front of such property.

SEC. 596. *Cost of sidewalks along wharves, parks, etc.* In all cases where it shall be deemed necessary by any municipal corporation to build or repair sidewalks along that portion of any street, alley or public highway, which passes by or through any public wharves, market-spaces, parks, cemeteries public grounds or buildings, the proper proportion of the estimated expense thereof shall be by the council of such corporation levied, certified and collected in the same manner as is provided in chapter forty-eight.[3]

V.—*Turnpikes, Plankroads and Water-courses.*

SEC. 597. *Cost of turnpikes, etc., owned or controlled by corporation.* When any portion of any turnpike or plankroad, or the control thereof, is required by any municipal corporation, or when any arrangement is made with the company owning the same for the improvement or repair thereof, the cost thereof, and of improving and keeping the same in repair, shall be provided for in the same manner as the streets and other highways of the corporation.[4]

SEC. 598. *Remedy for neglect of corporation to keep roads in repair.* If a municipal corporation shall condemn any portion of a

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[1] Act of February 15, 1867; 64 O. L. 16.

[2] Act of March 16, 1865; 62 O. L. 45.

[3] Act of February 21, 1866; 63 O. L. 22.

[4] Act of April 6, 1866 (63 O. L. 187); May 1, 1861 (58 O. L. 113); May 13, 1868 (65 O. L. 187.)

turnpike or plankroad, and fail to keep the portion so condemned in as good condition and repair as is required by the charter of the company, the directors of the company may, by writ of mandamus, compel the corporation to perform that duty.[1]

SEC. 599. *Adaptation of turnpikes to corporation improvements, etc.* Whenever the road of any turnpike or plankroad company shall pass through or terminate in any municipal corporation, the council or trustees shall have power, with the consent of the company, to make any improvement or repair of such road as shall be additional to the improvement or repair required by law of the company, and as, in the opinion of the council or trustees, will better adapt such road to use as a street of the corporation.[1]

SEC. 600. *Right of toll not to be impaired.* The right of any company to take toll at any toll-gate established in the corporation, shall not be impaired by anything in this act contained.[1]

SEC. 601. *Cost of constructing, etc., water-courses.* The expense of constructing, opening, enlarging, excavating, improving, deepening, or extending any canal, ship-channel, or water-course, as authorized by this act, shall be assessed and collected in the manner pointed out in this chapter.[1]

CHAPTER L.

SEWERS, DRAINS AND DITCHES.[2]

SECTION.
602. Plans for sewerage and drainage.
603. Sewer districts.
604. Main or trunk sewers.
605. Assessment by districts.
606. Discrimination as to improvements.
607. Plans and specifications.
608. Ten days' notice to be given, etc.
609. Amendment of plans, etc.
610. Engineer to estimate costs, etc.
611. Construction of sewers, ordinance, etc.
612. Assessment of cost of main sewers.
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634. House connections and branches.
635. Cost of branch sewers, how assessed.
636. Tapping sewers for private use.
937. Ditches for drainage.
638. Repairs of ditches, sewers, etc.

SEC. 602. *Plans for sewerage and drainage.* Whenever it may become necessary, in the opinion of the council of any city or incorporated village, to provide a system of sewerage and drainage for such

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[1] Act of May 1, 1861 (58 O. L. 113); May 13, 1868 (65 O. L. 187); February 19, 1866 (63 O. L. 18); March 28, 1864 (61 O. L. 71.)

[2] On an application to vacate a restraining order theretofore issued, to prevent the threatened destruction of plaintiff's building by the defendant, in the excavation of an alley for sewerage, it appeared that the alley had been dedicated to the public and used as a thoroughfare for more than

city or incorporated village, or any parts thereof, it shall be the duty of the board of improvements to devise and form, or cause to be devised and formed, a plan of sewerage and drainage for the whole city

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thirty years; that the alley was nine feet in width, and the buildings had been erected upon its north and south lines by a grade regularly established by the city authorities; that the alley had been paved and improved upon the grade, and the plaintiff's building, a valuable structure of several stories in hight, abuts upon it; that the defendants had begun and intended to continue to excavate throughout the alley, four feet in width and thirteen and a half feet in depth, for the purpose of carrying out a general system of sewerage adopted by the city, under the laws of the state; that the plan of sewerage prescribed by law had been prepared with care, many of the principal sewers were already built, and the connections to the main channels were required to be laid through the alleys which divide and intersect the various blocks on the city plat; that the excavation could not be made to the depth contemplated by the city without immediate destruction or permanent consequential injury to the owners, requiring thorough reconstruction, or the expenditure of large sums to repair and render safe the tenements.

Storer, J., said: "As the inevitable result of the work thus projected, we are satisfied from the proofs before us, as well as the condition of the premises, the plaintiff's building will fall, or be so impaired in its integrity from the cracking of its walls, or the sinking of the soil, that it will become necessary to take it down and re-erect it. Should such an event occur, we must hold the defendants liable in damages. They have not only hazarded the safety of all the structures along the line of the alley by the excavation, but by digging below the surface, beyond the point authorized by law, have assumed all the responsibility of the result. If, when an injury is done, the individual suffering may recover to the extent of his loss, it follows he must have the additional right to invoke our preventive aid by injunction to secure his possession. It can not be claimed that a corporation possesses a higher immunity from liability than an individual, when the question is made how far the owner and proprietor of a dwelling-house is to be protected in its enjoyment. He may well ask the judicial tribunals to defend his domicil from individual as well as public aggression."

"In the ordinary case of adjacent landholders, there is always an implied right to lateral support; neither can impair the natural strength of the soil on which the other's occupation rests; the privilege of being mutually upheld by the common surface is unquestionably secured, and we can not distinguish between that class of individual rights and those claimed by the plaintiff in this action." Motion to vacate overruled. *Fenton* v. *Cincinnati*, Superior Court of Cincinnati, 1868. MS.

It is not in the power of the city council to charge the cost of constructing a sewer on the owner of the property unless the law authorizing the assessment was in force at the time the improvement was made. *Cincinnati* v. *Wiggins*, Superior Court of Cincinnati, General Term. MS.

Where a building was erected on the line of an alley with reference to the grade of the alley before that time established in due form of law by the city council, and the city dug to the depth of fourteen feet in the alley for the purpose of placing a public sewer therein, under the act of March 14, 1864, which excavation so impaired the foundation of the building that the walls separated and cracked, and the building became dangerous, and in consequence of which it was taken down: *Held*, that the city was liable for the damages thereby occasioned. *Aub* v. *Cincinnati*, Superior Court of Cincinnati, General Term. MS.

Storer, J.: "It seems to us there is no distinction between the power claimed to build a sewer, or to regrade or improve the highway; both affect directly the rights of lot-owners; and the same reason exists in the

or incorporated village, or any part or parts thereof as may be designated by the council.[1]

SEC. 603. *Sewer districts.* The plan so devised shall, in the discretion of the council, be formed, with the view of the division of the corporation into as many sewer districts as may be deemed necessary for securing efficient drainage and sewerage; each of the districts to be designated by name or number, and to consist of one or more main or principal sewers, with the necessary branches and connections, the main or principal sewers having their outlet in a river or other proper place; the districts to be so arranged as to be independent of one another so far as practicable.[2]

SEC. 604. *Main or trunk sewers.* The council may, if they deem expedient, provide for the construction of main or trunk sewers without regard to districts.[2]

SEC. 605. *Assessment by districts.* Where the corporation is divided into sewer districts, the assessments provided for in this chapter shall be by districts.[2]

SEC. 606. *Discrimination as to improvements.* After such plan shall have been prepared and adopted by the board of improvements, it shall be their duty to designate such portions of the work as may be required for immediate use. Where the corporation is divided into districts, such designation shall be by districts, and shall show what district or districts, or part or parts thereof, are to be improved.[2]

SEC. 607. *Plans and specifications.* It shall be the duty of the board to have plans and specifications prepared for the construction of the proposed main sewers, showing the size, location and inclination thereof, and the depth of the same below the surface.[2]

SEC. 608. *Ten days' notice to be given, etc.* When plans and specifications for the main sewers have been prepared, it shall be the duty of the board of improvements to give at least ten days' notice in one

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one case as in the other, why the court should require those who have produced the injury to repair it." *Ib.*

Where, in constructing a general system of sewerage, the work is improperly or negligently done, the city is liable for any injury thereby occasioned to person or property. But, although the city has conferred upon it the full power to make "common sewers, drains and vaults," yet it is not liable for a failure to provide such general system. The language is that of permission and not of command, and if it can in any sense be regarded as imperative, still there can be for such failure no civil remedy. *Procter* v. *Cincinnati*, Superior Court of Cincinnati, General Term, 1865. MS.

That with respect to the construction of sewers and their connection with private sewers, a city, having by law a board of public works and a city civil engineer, is bound to the use of such knowledge and skill in the sewerage of the city as a careful, skillful and competent city engineer, having charge of such work, should exercise and use, taking into consideration the uses and purposes for which sewers are constructed in the city. *Ib.* And ordinary care is all that is required in the preservation of the public works, streets, etc. Disney R. 532.

[1] Act of March 14, 1864 (61 O. L. 25); April 8, 1856, § 6.

[2] Act of March 14, 1864 (61 O. L. 25); March 25, 1864 (61 O. L. 64); May 1, 1864 (61 O. L. 48); March 9, 1866 (63 O. L. 36); April 21, 1868 (65 O. L. 104); April 16, 1867 (64 O. L. 236); March 26, 1860 (4 Curwen, ch. 2105); March 11, 1863 (60 O. L. 14); May 1, 1858 (4 Curwen, ch. 1857.)

or more newspapers of general circulation in the corporation, stating that such plans have been prepared, and are filed in the office of the board for examination and inspection by parties interested. The notice shall also show the portions of the work proposed to be done; and, where main sewer districts are provided for, shall give the boundaries thereof.[1]

SEC. 609. *Amendment of plans, etc.* At the time specified in the notice, or at any adjourned meeting, the board of improvements shall hear the parties interested, and may, if they see proper, amend or correct the plans; and they shall thereupon file the plans, as amended, or, if no amendment be made, then the original plans, duly certified by them, in the office of the civil engineer of the corporation.[1]

SEC. 610. *Engineer to estimate costs, etc.* After the plan of sewerage for the corporation, or any part thereof, shall have been approved by the board of improvements, and duly filed in the manner above provided, the council may direct the civil engineer to make an estimate of the cost and expenses of constructing the work according to such plan, and to report to the council what portion of the same will be required for main sewerage, and what portion for local sewerage for any lots and lands to which any portion of such main sewer shall serve as local sewer.[1]

SEC. 611. *Construction of sewers, ordinance, etc.* The council shall, on the recommendation of the board of improvements, cause to be constructed such sewer or sewers, specified in said plan, as shall be designated by the board; and the ordinance shall specify the street, lane, alley, highway, market-space, public landings or commons, or part or parts thereof, to be sewered and drained, in such manner that an examination or survey will show what lot or lots of land bound or abut on the same; and the council, upon the passage of such ordinance, shall cause a plat to be made and filed in the office of the clerk of the corporation, of the lots so bounding or abutting, and the number of the feet front of each lot.[2]

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[1] See note 2, ante, p. 155.

[2] Act of April 12, 1861 (58 O. L. 86); March 14, 1864 (61 O. L. 25); May 1, 1861 (58 O. L. 57); May 1, 1864 (61 O. L. 48); March 9, 1866 (63 O. L. 36); April 16, 1867 (64 O. L. 236); April 3, 1867 (64 O. L. 104); April 8, 1856); May 1, 1858: March 26, 1860; April 11, 1865 (62 O. L. 117); March 11, 1863 (60 O. L. 14.)

The city council having declared that it was necessary to provide a thorough system of sewerage and drainage, the Board of City Improvements adopted a general plan, making divisions and districts, and among others the eighth district. The board selected that district as one for immediate improvement, and caused plans, etc., to be prepared, and after approving them, caused the same to be filed in the office of the city engineer. On the recommendation of the board, the council, August 12, 1866, passed an ordinance for the construction of sewers, etc., in that district, the cost to be assessed according to the statute and ordinances. After advertisement was made, the contract for the construction of the sewer, etc., was awarded to C., who performed the work according to instructions. The board afterward recommended to the council an ordinance levying two dollars on each front foot of the lots bordering on the streets sewered to defray the cost. K. was the owner of a lot abutting on one of the streets so improved.

Sec. 612. *Assessment of cost of main sewers.* The council shall provide for assessing the cost and expenses of constructing main sewers upon the lots and lands bounding or abutting upon the streets, lanes, alleys, highways, market-spaces, public landings and commons, in or along which the same shall pass, upon the feet front, or according

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To a petition fully setting forth these facts, K. answered, among other things, that there was no connection between his premises and the sewer; that there was no drainage from his property into the sewer; that he was prohibited by statute and ordinance from tapping the sewer or making a connection therewith, unless he would pay a further sum for the privilege, and bind himself to hold the city harmless from loss occasioned by reason of such connection; and that the sewer was of no special use or benefit to his property, and was part of a general system for the public use: whereupon he insisted that the levying this assessment was a violation of the Constitution, art. 12, § 2; art. 13, § 6. C. filed a demur to the answer, and that was sustained. *Cottle* v. *King*, Superior Court of Cincinnati, General Term. MS.

"The question presented by the pleadings," said Storer, J., "is simply this: Have the city council, under the act of March 14, 1864, amendatory to the act of March 5, 1860, and the subsequent ordinances of the city, the authority to assess the cost of sewerage upon the real estate abutting upon the public street where the work is constructed?

"The distinction between the constitutional right to levy taxes for general purposes, to raise a revenue for state or municipal purposes, and the power to assess private property for the improvement of thoroughfares, is so well defined by the language of the present Constitution and the decisions of our courts, that we are left in no doubt as to the true meaning of our organic law on the subject. All property may be taxed, but all can not be assessed. In the one case, the public interest makes the imposition proper; in the other, the benefit of the projected work to the individual authorizes an assessment upon his estate, which discriminates the burden from general taxation. This was the construction given to the Constitution of 1802. * * * * * * * * * * * *

"But it is claimed that the principle modifying the right to assess the property of individuals for the expense of public improvements is, that the owner is individually benefited in proportion thereto, and the exercise of the taxing power for that purpose is legitimate. And this would seem to be the opinion of the Supreme Court in *Hill* v. *Higdon*, 5 O. S. 243, where Judge Ranney lays down the rule. We accept the definition, and are satisfied it should control our action in every proper case where it can with safety be applied. If the supposed benefit to the land-owner authorizes the assessment, what shall be the measure of the benefit? how far shall it extend? what must be its real value?"

After a full examination of the subject, the court held, that notwithstanding the general allegations of the answer that the sewer was no benefit to K., yet on the facts as they appeared, there was that kind of special benefit which authorized the assessment; and hence, as already stated, the demur to the answer was sustained.

Where an assessment was charged by the city on real estate for the cost and expense of building a circular stone culvert of six feet interior diameter through private property, and it appeared the work was done under the act of March 14, 1864: *Held*, that the assessment could not be enforced. Hoadly, J.: "It is obvious that the power has been denied to the city to assess the cost of such improvement on any other property than that fronting on each side of a street, lane, alley, common, market-space, or public landing, through or under which the sewer passes. If the sewer is through private property the law is inapplicable, and the entire cost must be paid out of the general fund." *Bauer* v. *Cincinnati*, Superior Court of Cincinnati, 1865. MS.

to the valuation of the same on the county duplicate, or according to benefits, as they shall determine in each case.[1]

SEC. 613. *Limit of such assessment.* Such assessment shall not exceed the sum that would, in the opinion of the council, be required to construct an ordinary street sewer or drain of sufficient capacity to drain or sewer said lots or lands; nor shall any lots or lands be assessed that do not need local drainage, or are already provided therewith. The excess of the cost, if any, over the assessment herein authorized, shall be paid out of the sewer fund of the corporation.[1]

SEC. 614. *Assessment of cost of local sewerage.* The council shall also provide for assessing the expenses of local sewerage upon the feet front of lots and lands by or through which any portion of the main sewer may pass, or according to the valuation of the same upon the duplicate, or in proportion to benefits, as they shall determine in each case.[1]

SEC. 615. *Rule of assessment, etc.* If the assessment is upon the feet front, the basis shall be determined by taking the total cost of constructing the main and lateral sewers and drains, and the necessary appurtenances and inlets, and dividing such gross amount by the number of feet front subject to assessment as herein provided for, on each side of the street, lane, alley, highway, common, market-place or public landing, through or in which said sewers and drains may be laid, the quotient forming the amount to be assessed per foot front for each side of said street, lane, alley, highway, common, market-space or public landing aforesaid, as a charge for the cost and expenses of constructing said sewers and drains, and their necessary appurtenances.[1]

SEC. 616. *Discrimination in assessment in certain cases.* The council may exempt from assessment such portion of the frontage of any lot having a greater frontage than its average depth, and so much of any frontage of corner lots as to them may seem equitable, and charge the deficiency caused by such exemption on the whole frontage taxed pro rata; but in so doing they shall specially set forth in the ordinance making such assessment each lot so exempted; which ordinance, when passed, shall be binding upon the parties interested.[1]

SEC. 617. *Assessment not to exceed two dollars per front foot.* In no case shall the assessment exceed the sum of two dollars per front foot on the property assessed; and when the amount of the quotient exceeds this sum, the excess shall be paid out of the sewer fund of the corporation.[1]

SEC. 618. *Assessment according to benefits.* If the assessment is according to benefits, the council shall appoint three judicious freeholders of the corporation, or its vicinity, who shall assess the estimated expense of the main sewerage upon the lots or lands along which the same shall pass, in the manner above provided, in proportion to benefits; and the estimated expense of the local sewerage where such local sewerage shall be provided for by this chapter, on

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[1] See note 2, ante, p. 156.

such lots and lands as will, in their opinion, be benefited thereby, whether fronting on the public ground in which the local sewer is to be constructed or not, in proportion, as nearly as may be, to the benefits which may result to each lot or parcel of land.[1]

SEC. 619. *Report of assessments.* The assessors shall make a report in writing, specifying the amounts assessed by them upon each lot or parcel of land for main or local sewerage separately, and file the same with the clerk of the corporation within such time as the council shall direct.[1]

SEC. 620. *Notice of assessment to be published.* After the report is filed, the council shall cause not less than ten days' notice to be given in some newspaper of general circulation in the corporation, of the object of such assessment, and that the same will come before the council for confirmation at a time to be specified in the notice.[1]

SEC. 621. *Filing of objections to assessment.* Objections to the assessment shall be in writing and filed with the clerk within two weeks after the expiration of the notice, and persons objecting may be heard before the council at the time specified in the notice.[1]

SEC. 622. *Action of council thereon.* The council may set aside the assessment on their own motion, or they may, after hearing objections, confirm the same.[1]

SEC. 623. *New assessment provided for.* If the council set the first or any other assessment aside, they may appoint other assessors possessing the same qualifications as hereinbefore provided, cause new assessments to be made, and the proceedings shall be the same as is provided for in the first assessment.[1]

SEC. 624. *Errors to be corrected.* In confirming any assessment, the council may correct any errors in description of any lots or lands made by the assessors.[1]

SEC. 625. *Order to county auditor to place assessment on duplicate.* After making an assessment for main or local sewerage according to valuation, or according to feet front, or after the confirmation of any assessment for main or local sewerage according to benefits, the council may order such percentage of the assessment for main sewerage as may be necessary to pay the estimated cost of such portion of any main sewer, as provided for in this chapter, as they may determine to construct, together with the total assessment for local sewerage for such portion of any main sewer, whether the assessment be by valuation, by benefits or by the feet front, to be certified to the county auditor of the county in which the corporation is situate, to be placed on the county duplicate and collected as other taxes.[1]

SEC. 626. *Assessment to be a lien on lands.* All assessments made under the provisions of this chapter shall be a lien on the lots or lands assessed. They shall be transferrable, and may be collected against the owners personally, or by an enforcement of the lien upon the property subject thereto.[1]

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[1] Act of February 9, 1863 (60 O. L. 6); May 1, 1864 (61 O. L. 48); March 14, 1864 (61 O. L. 25); May 1, 1861 (58 O. L. 86); May 1, 1858 (4 Curwen, ch. 1857.)

SEC. 627. *Proceedings for recovery of assessments.* Proceedings for the recovery of the assessments or the enforcement of the lien, shall be as directed in chapter forty-eight.

SEC. 628. *Assessments in new sewer districts.* Whenever a sewer district shall be set off, or established, the main sewer of which shall be a continuation of, or drain through, or into, the main sewer of any other district, the council, in providing for assessing the costs and expenses of the main sewer in such new sewer district, may provide for assessing upon the lots and lands in such new sewer district such proportion as said council shall determine to be just, of the cost and expenses of constructing any unconstructed part of the main sewer, in the district through which said new main sewer shall drain; such assessment, when the proportion thereof shall be so determined, shall be made in the manner that other assessments are herein directed to be made.[1]

SEC. 629. *Subdivision of main sewer districts.* The council shall have power to subdivide any main sewer district into sub-main sewer districts, or lateral or branch sewer districts, in the manner in which the establishment of main sewer districts is provided for; and to lay out and construct in such sub-main, or lateral or branch sewer districts, sub-main, lateral or branch sewers having a common outlet into a main sewer, and to assess and collect the cost of such construction upon the lots and lands in such sub-main, or lateral or branch sewer district, in all respects, as directed in this chapter for the assessment and collection of the cost of constructing main sewers.[1]

SEC. 630. *Assessment pro rata, etc.* If the council shall determine to build only a portion of the sewer or sewers in such sub-main, lateral or branch sewer districts, it shall be lawful in such case to levy and assess the pro rata cost of constructing the whole of the sewer or sewers in such districts, upon the lots or parcels of land bounding or abutting upon the streets or public highways through or by which said portion of such sewer or sewers may be constructed, and the excess in the cost of the sewer or sewers so built, over and above the estimated pro rata cost for the whole district, shall be levied and assessed pro rata upon all the lots or parcels of land bounding or abutting upon the streets or public highways in such districts in which the sewer or sewers are not at that time completed.

SEC. 631. *Construction of branch or local sewers.* The council may provide for the construction of branch or local sewers, upon any street or other public ground within the corporation, wherein a main sewer is not established or built, which local sewers shall connect with a main sewer convenient thereto, as the council may direct. If the corporation be laid off into districts, the connection shall be with a main sewer in the district wherein the local sewers are constructed.[1]

SEC. 632. *Proceedings therefor.* Proceedings for the establishment and construction of local sewers, as provided for in the preced-

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[1] Act of April 21, 1868 (65 O. L. 104); April 5, 1866 (63 O. L. 144); April 3, 1867 (64 O. L. 104.)

ing section, and for the assessment and collection of the cost and expenses thereof, shall be as directed in the previous sections of this chapter regulating the establishment and construction of local sewers in connection with main sewers.[1]

SEC. 633. *Division of lots after first assessment.* Should any division or subdivision of lots or lands assessed for sewerage purposes occur after the first assessment has been made and confirmed, the council may require the same, or such other assessors as they shall select, to apportion the original amount assessed upon the several parts of lots or lands so divided, whose report, when confirmed by the council, shall be conclusive upon all parties; and all assessments thereafter made upon such lots or lands, shall be according to such division, and collected in the same manner as upon the original assessment.[2]

SEC. 634. *House connections and branches.* The council, upon the recommendation of the board of improvements, may provide for the construction of proper house connections and branches, leading into all main or branch sewers, and for the assessment of the cost and expense thereof upon the lots or parcels of land, for the accommodation of which such connections and branches may be constructed. In no case, except as a sanitary measure, shall the council require such house connections to be built further from the sewer than to the inner line of the curbstone of the street or highway in which the same may be constructed.[2]

SEC. 635. *Cost of branch sewers, how assessed.* When any improvement provided for in the preceding section has been made, and the assessment therefor has not previously been ordered, the council shall pass an ordinance assessing the costs thereof upon the lots or parcels of ground for the accommodation of which such improvement was made, and such ordinance shall declare the time within which said assessment shall be paid into the treasury.[2]

SEC. 636. *Tapping sewers for private use.* Parties owning property abutting upon any street or public highway, in or though which any public sewer or drain may be constructed, shall have the privilege of tapping and using the same for the purpose of draining their premises, under such rules and regulations as may be prescribed by the board of improvements; and the council may, by ordinance, require persons contracting to build such house connections to procure a license from said board, and may charge therefor such sum as may be deemed just.[2]

SEC. 637. *Ditches for drainage.* The council of any city or incorporated village shall also have power to provide for the construction of ditches for necessary drainage within the corporation, under the restrictions and regulations, so far as applicable, contained in this chapter.[2]

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[1] See note 1, ante, p. 160.

[2] Act of March 14, 1864 (61 O. L. 25); February 9, 1863 (60 O. L. 6); January 26, 1867 (64 O. L. 8); April 11, 1867 (64 O. L. 124); April 16, 1867 (64 O. L. 236); April 5, 1866 (63 O. L. 144); April 21, 1868 (65 O. L. 104); May 1, 1861 (58 O. L. 86.)

SEC. 638. *Repairs of ditches, sewers, etc.* The council may, whenever it shall be deemed neeessary, provide for the repair or reconstruetion of any sewer, ditch or drain. The proeeedings for that purpose shall be the same, so far as applieable, as are herein required for the original construetion thereof.[1]

CHAPTER LI.

FINANCE AND TAXATION.[2]

SECTION.
639. Taxation in villages for special purposes.
640. Rates of taxation in cities and villages for general purposes.
641. Rates of levy for special purposes.
642. Construction of limitations.
643. Anticipation of tax in certain cases.
644. Rates of levy for special purposes.
645. Levy for payment of bonds.
646. Levy for a greater tax to be submitted to vote.
647. Levy of tax for public buildings.
648. Maximum of tax allowable
649. Per centage of tax to be certified to county auditor.
650. Corporation taxes, how collected
651. Levy and collection of taxes within corporation.

SECTION.
652. Delinquent taxes to be certified to county auditor, etc.
653. Collection of taxes to pay bonds, etc., issued for public improvements.
654. Collection to pay bonds issued for sewerage purposes.
655. Taxes on lands laid off into lots, etc.
656. Debts not to exceed taxes and other revenue.
657. Mayor to record his protest against excess of expenditure.
658. Board of revision, its duties.
659. Services and supplies to be in pursuance of contracts.
660. Council restricted as to contracts.

SEC. 639. *Taxation in villages for special purposes.* The trustees of ineorporated villages for speeial purposes, shall have power to levy annually, upon the taxable property therein, such rate of taxes as may be necessary for the purposes mentioned in ehapter five, not exceeding ten mills on the dollar, for all purposes in any one year. The taxes so levied shall be eolleeted in the same manner as the taxes of other munieipal eorporations.

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[1] See note 2, ante, p. 161.

[2] Const. of Ohio, Art. XIII, § 6; Act of May 14, 1868 (65 O. L. 195); April 14, 1863 (60 O. L. 93); May 1, 1861 (58 O. L. 86); April 10, 1867 (64 O. L. 121); February 21, 1867 (64 O. L. 21); March 9, 1866 (63 O. L. 30); April 2, 1866 (63 O. L. 86); April 13, 1867 (64 O. L. 141); February 21, 1867 (64 O. L. 19); May 1, 1865 (62 O. L. 117); April 12, 1867 (64 O. L. 129); Act of 1852, § 89, as amended March 11, 1853; March 11, 1853, § 12, as amended March 30, 1857; April 5, 1856 (53 O. L. 57.)

Act of March 11, 1853, amended March 28, 1859; March 30, 1857; March 11, 1867 (64 O. L. 50); February 15, 1868 (65 O. L. 9); February 3, 1864 (61 O. L. 5); May 5, 1868 (65 O. L. 145); April 11, 1867 (64 O. L. 123); March 28, 1864 (61 O. L. 72); April 12, 1865 (62 O. L. 136); April 8, 1868 (65 O. L. 67); April 9, 1863 (60 O. L. 68); April 16, 1867 (64 O. L. 230); April 11, 1865 (62 O. L. 113); Mareh 30, 1868 (65 O. L. 39); February 24, 1865 (62 O. L. 31); Mareh 28, 1864 (61 O. L. 72); April 16, 1867 (64 O. L. 215–249); February 27, 1867 (64 O. L. 26); March 28, 1864 (61 O. L. 71); February 19, 1866 (63 O. L. 18); March 25, 1863 (60 O. L. 44); April 13, 1867 (64 O. L. 130); April 6, 1866 (63 O. L. 152); May 3, 1852, § 77, as amended April 29, 1854; March 29, 1867 (64 O. L. 70); April 3, 1867 (64 O. L. 102); April 16, 1867 (64 O. L. 203); April 12, 1865 (62 O. L. 135); May 8, 1868 (65 O. L. 163); April 5, 1866 (63 O. L. 120); April 13, 1867 (64 O. L. 149); March 28, 1861 (58 O. L. 46); May 3, 1861 (58 O. L. 114); Mareh 14, 1867 (64 O. L. 52); February 24, 1865 (62 O. L. 31); March 31, 1864 (61 O. L. 134); April 13, 1867 (64 O. L. 148); March 12, 1853 (51 O. L. 376.)

SEC. 640. *Rates of taxation in cities and villages for general purposes.* The council of any city or incorporated village shall have power to levy, annually, for the general purposes of the corporation, such amount of taxes on each dollar of valuation of taxable property of the corporation on the grand duplicate, as may be determined upon by them, not exceeding the following rates:

1. For each incorporated village, five mills.
2. For each city of the second class, six mills.
3. For each city of the first class, seven mills.

SEC. 641. *Rates of levy for special purposes.* Each city and incorporated village shall also have power to levy annually, in addition to the above, the following rates:

1. For sanitary and street-cleaning purposes, one mill.
2. For the maintenance of the infirmary of the corporation, and the support of the out-door poor, three-fourths of a mill.
3. For keeping in repair steam or other fire engines, graded wharves or landings on navigable waters, graded, macadamized or paved streets, corporation cemeteries, and for the support of the fire department, one mill and a half.
4. For lighting the corporation or supplying it with water, one mill and a half.
5. For keeping up and maintaining bridges, one-half of one mill.
6. For the payment of the marshal and police authorized by this act, one mill.
7. For the maintenance of the work-house, one mill.
8. For the expense of maintaining and administering houses of refuge and correction, over and above the receipts from labor of persons confined therein, such sum as may be necessary to meet the same.
9. For schools and school-house purposes, such rate as may be prescribed by law.
10. For a sewer fund, one-half of one mill. Where the corporation is divided into sewer districts, the levy shall be by such districts.

SEC. 642. *Construction of limitations.* The limitations contained in the two preceding sections, shall not be construed to prohibit special assessments for improvements provided for by this act, nor the levy of a tax to raise means for the payment of the interest and principal of the debts of the corporation, nor of any tax authorized by law for special purposes.

SEC. 643. *Anticipation of tax in certain cases.* The council shall have power to anticipate the tax authorized to be levied for sanitary and street-cleaning purposes, either by the temporary transfer of other funds (except school funds), or by temporary loans for that purpose.

SEC. 644. *Rates of levy for special purposes.* The council shall also have power to make the following levies:

1. For the real estate and right of way required for any improvement authorized by this act, one mill.
2. For erecting, enlarging or improving water-works, three mills.
3. For the erection of school buildings, three mills.
4. For wharves and landings, one-half of one mill.

5. For market-houses, two-tenths of one mill.

6. For the erection of corporation prisons, three-tenths of one mill.

7. For the erection of buildings required for the fire department, the construction of reservoirs, the purchase of steam or other fire engines, hose and other apparatus for the use of such department, one mill.

8. For the erection of halls and public offices, one mill.

9. For the improvement of highways leading into the corporation, three-tenths of one mill.

10. For the construction of levees and embankments, one-half of one mill.

11. For the improvement of any water-course passing through the corporation, one-half of one mill.

12. For the erection of work-houses, three mills.

13. For the erection of houses of refuge and correction, three mills.

14. For the erection of hospitals, three mills.

15. For the erection of infirmaries, three mills.

16. For the erection of gas-works, three mills.

17. For grounds for cemetery purposes, inclosing, improving, embellishing or enlarging the same, one mill.

18. For grounds for public parks, inclosing, improving, embellishing or enlarging the same, two mills.

19. For the construction of bridges, two-tenths of one mill.

20. To pay the interest on the public debt of the corporation, a sum sufficient to satisfy the same as it accrues annually, to be applied to no other purpose.

21. For the construction and repair of sewers, drains and ditches, one mill. Where the corporation is divided into sewer districts, the levy shall be by such districts.

22. For the purpose of keeping up and maintaining a free public library and reading-room in the corporation, one-half of one mill. But no tax shall be levied for this purpose unless a suitable lot and building therefor, supplied with library furniture and fixtures, shall first be donated, leased to or rented by the corporation.

23. For any improvement authorized by this act not above provided for, one mill.

24. Such proportion of the amount authorized to be levied by this section, for either of the purposes therein specified, may be levied annually, as the council may, by ordinance, prescribe.

SEC. 645. *Levy for payment of bonds.* When the bonds of the corporation have been issued in anticipation of any tax provided for in the preceding section, the same tax may be levied to raise means for the payment of such bonds as is authorized for the purpose for which they were issued.[1]

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[1] Where a municipal corporation issues its own bonds, payable at a future day, with seven per cent. interest thereon, payable semi-annually, when by law it was authorized to make the interest payable annually only, the person who contracts with the corporation, for a valuable consideration, to redeem such bonds, can not avoid his own contract upon the ground that the corporation exceeded its authority in making the in-

SEC. 646. *Levy for a greater tax to be submitted to vote.* A greater tax than that authorized by this chapter, for either of the purposes mentioned therein, may be levied, if the proposition to make such levy shall have been first submitted to a vote of the electors of the corporation, under an ordinance prescribing the time, place, and manner of voting on the same, and approved by a majority of those voting on the proposition.

SEC. 647. *Levy of tax for public buildings.* Whenever it may become necessary for any city to provide grounds and erect thereon a court house, jail, or public offices, for the use of the county within which it may be situated, or to contribute to either of said purposes, the council may levy a tax of one mill upon the taxable property of the corporation. But such tax shall not be levied until the same shall be approved by a majority of the electors of the corporation in the manner pointed out in the preceding section.

SEC. 648. *Maximum of tax allowable.* The aggregate of all taxes levied or ordered by any corporation, over and above the general levy, shall not exceed in any one year three per cent. on the value of any property assessed for taxation.

SEC. 649. *Per centage of tax to be certified to county auditor.* The council shall cause to be certified to the auditor of the county, on or before the first Monday of June, annually, the per centage by them levied on the real and personal property in the corporation returned on the grand levy; and the county auditor shall place the same on the duplicate of taxes for said county in the same manner as township taxes are now by law placed on said duplicate.

SEC. 650. *Corporation taxes, how collected.* The taxes of the corporation shall be collected by the county treasurer, and paid into the treasury of the corporation, in the same manner, with the same power and restrictions, and under the same regulations; and in all things as to the sale of real or personal property, he shall act according to the provisions and requisitions of the law for the collection of taxes for state and county purposes.

SEC. 651. *Levy and collection of taxes within corporation.* Nothing in this chapter shall be construed to prevent any corporation that may elect to do so, from levying and collecting taxes within the corporation; and when any corporation shall elect to levy and collect such taxes, it shall be the duty of the council to provide, by ordinance, for the appointment and regulation of the necessary officers to carry the same into effect; and such officers so created shall have all

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terest on such bonds payable semi-annually instead of annually. *Newark* v. *Elliott*, 5 O. S. 113.

The issuing of bonds in the name of "the town of Perrysburg," instead of the name of "the incorporated village of Perrysburg," when the latter would have been its proper legal designation, is merely a misnomer, which does not affect the validity or obligation of such bonds. *State* v. *Perrysburg*, 14 O. S. 472.

And see the cases collected in THE OHIO DIGEST, p. 59 *et seq.*, p. 627 *et seq.*

the power, and be under all the restrictions of county auditors, county treasurers, and township assessors, so far as the same shall be applicable to them, except in the sale of delinquent lands.

SEC. 652. *Delinquent taxes to be certified to county auditor, etc.* The council may order the clerk, or other proper officer of the council, to certify any delinquent tax assessed by the corporation to the auditor of the proper county, which delinquent taxes, so certified, the auditor is hereby required to place on the grand tax duplicate of the county in a separate column, and the same shall be collected in like manner as delinquent state and county taxes.

SEC. 653. *Collection of taxes to pay bonds, etc., issued for public improvements.* In case any special assessment is made, as authorized in chapter forty-nine, and bonds, notes, or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the ordinance directing the assessment shall specify the amount per foot front or the amount per valuation to be paid, and where the assessment is payable in installments, the amount to be paid annually. And it shall be the duty of the auditor or clerk of the corporation, on or before the second Monday in September, annually, to certify such assessment to the council, to be by them confirmed, and thereupon they shall direct the clerk to certify the same to the county auditor, who is hereby authorized and required to place the same on the tax duplicate; and the county treasurer is hereby authorized and required to collect said assessment in the same manner as other taxes are collected, and when collected he shall pay the same to the treasurer of the corporation, to be by him applied to the payment of said bonds, notes, or certificates of indebtedness and interest thereon, and for no other purpose; and for the purpose of enforcing the collection of said assessment, the county treasurer shall have the same power and authority now allowed by law for the collection of state and county taxes.

SEC. 654. *Collection to pay bonds issued for sewerage purposes.* In case any special assessment is made for sewerage purposes, as authorized by chapter fifty, and the bonds of the corporation are issued in anticipation of the collection thereof, such assessment shall be certified to the council, confirmed, certified to the county auditor, and collected at the same time and in the same manner as is provided in the preceding section, and when collected shall be applied to the payment of said bonds, and to no other purpose.

SEC. 655. *Taxes on lands laid off into lots, etc.* The council shall have power to impose taxes upon parcels of land laid off into lots, and sold or leased by metes and bounds or other description, though the same shall not have been platted and recorded.[1]

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[1] The 26th section of the act of March 11, 1853, to amend the act for the organization of cities and incorporated villages (act of 1852, § 87), requires the auditor of the county to place upon the duplicate of taxes the per centage regularly levied and certified by the council of a municipal corporation on all the real and personal property returned on the grand levy in such corporation. *Zanesville* v. *Auditor, etc.*, 5 O. S. 589.

The provisions of this section are in no way restricted by any provision

SEC. 656. *Debts not to exceed taxes and other revenue.* The council shall not make appropriations nor contract debts for ordinary purposes of the corporation, exceeding the amount of taxes and revenue from other sources for the current year.

SEC. 657. *Mayor to record his protest against excess of expenditure.* If, in the opinion of the mayor, an expenditure shall be authorized by the council, exceeding the revenues of the corporation, for the current year, it shall be his duty to protest against such expenditure, and enter such protest, and the reasons therefor, on the journal of the council.

SEC. 658. *Board of revision, its duties.* The mayor, the president of the council, and the solicitor of the corporation, shall constitute a board of revision, which shall meet as often as once in every month, to review the proceedings of the council, and of all other departments of the corporation government, and report to the council whether any department of such government has transcended its powers, whether any officer has neglected his duties, and also report whether any and what retrenchment in the expenses of the corporation, and what improvement in any of the departments of the corporation government can be made.

SEC. 659. *Services and supplies to be in pursuance of contracts.* All services rendered and performed, and all supplies furnished for the corporation, shall, as far as practicable, be rendered, performed and supplied in pursuance of contracts to be authorized by the council, through some appropriate officer or department of the corporation.

SEC. 660. *Council restricted as to contracts.* It shall be unlawful for the council to enter into any contract which is not to go in full operation during the term for which all the members of such council are elected.

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contained in the special act creating such corporation, or by any implication arising from the 94th section of the act of 1852. (See § 665, post.) *Ib.*

All such special acts are repealed by the last named act; and all exemptions of any part of the property in such corporation otherwise subject to taxation, from contributing to the general revenue fund, are in conflict with the 2d section of the 12th article of the Constitution. *Ib.*

No tax, either for state, county, township, or corporation purposes, can be levied without express authority of law: and this section of the Constitution is equally applicable to, and furnishes the governing principle for, all laws authorizing taxes to be levied for either purpose. *Ib.*

It requires a uniform rate per cent. to be levied upon all property, according to its true value in money, within the limits of the local subdivision for which the revenue is collected, subject only to the exemptions specifically provided for in the section. *Ib.*

A writ of mandamus will not lie to compel the county auditor to enter such tax upon the duplicate until the time arrives for making it up. *Ib.*

CHAPTER LII.

THE POWER TO BORROW MONEY AND ISSUE BONDS.[1]

SECTION.
661. Loans in anticipation of revenue.
662. Issue of bonds, etc., to extend time of payment.
663. Bonds for money borrowed in anticipation of revenue.
664. Bonds to be explicit on their face.
665. Borrowing money in anticipation of special assessment.
666. Issue of bonds for money borrowed in anticipation of assessment.
667. Bonds may have coupons attached.
668. Character of bonds in certain cases.
669. Sale of bonds to be advertised.
670. Bonds not to be sold below par.
671. Penalty for diverting funds from their legitimate use.

SEC. 661. *Loans in anticipation of revenue.* Loans may be made by municipal corporations, in anticipation of the general revenue fund. The aggregate amount of such loans in any one fiscal year shall not exceed, in case of an incorporated village for special purposes, one thousand dollars; of an incorporated village, fifteen thousand dollars; of a city of the second class, fifty thousand dollars; of a city of the first class, two hundred thousand dollars.

SEC. 662. *Issue of bonds, etc., to extend time of payment.* The trustees or council of any municipal corporation, for the purpose of extending the time of the payment of any indebtedness incurred, which from its limits of taxation such corporation is unable to pay at maturity, shall have power to issue bonds of such corporation, or borrow money, so as to change but not increase the indebtedness, in such amounts and for such length of time, and at such rate of interest as the council may deem proper, not to exceed the rate of seven per centum per annum.

SEC. 663. *Bonds for money borrowed in anticipation of revenue.* Loans may also be made by any municipal corporation in anticipation of the revenues to be derived from any tax authorized by this act for public improvements or other public use; and the council shall have power to issue the bonds of the corporation for the money so borrowed, in such amounts as they may determine, bearing a rate of interest not exceeding seven per centum per annum, and payable at

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[1] Act of April 16, 1868 (65 O. L. 92); March 28, 1864 (61 O. L. 71); April 11, 1865 (62 O. L. 117); April 13, 1868 (65 O. L. 86); April 11, 1868 (65 O. L. 85); Act of 1852, § 97; March 11, 1853, § 11; § 12, as amended March 30, 1857; March 31, 1864 (61 O. L. 134); April 13, 1867 (64 O. L. 148.)

"The power on the part of the municipal corporation to incur indebtedness by borrowing money and issuing bonds, is much more questionable than is the power to incur a debt by the purchase of property necessary for the public accommodation and use. If a debt is incurred for a necessary public purpose, there is no opportunity to divert the public means from its destination. But where a corporation borrows money and issues bonds, the money may be wasted or applied to other than public and municipal purposes. Hence it has generally been regarded as necessary to have express power to authorize a municipal corporation to borrow money and issue its bonds." *Morrill* v. *The City*, Superior Court of Cincinnati, 1869. Taft, Storer and Hagans, JJ.

See generally as to the power of taxation, cases collected in THE OHIO DIGEST, p. 59 *et seq.*

such time as they may deem proper, not exceeding fifteen years, and redeemable at any time after six years at the pleasure of the council.

SEC. 664. *Bonds to be explicit on their face.* All bonds issued under authority of this chapter shall express upon their face the purpose for which they were issued, and under what ordinance.

SEC. 665. *Borrowing money in anticipation of special assessment.* The council of any municipal corporation shall also have power to borrow money at a rate of interest not exceeding seven per centum per annum, in anticipation of the collection of any special assessment, and to issue the bonds of the corporation therefor in the manner and form above provided for.

SEC. 666. *Issue of bonds for money borrowed in anticipation of assessment.* If the council shall make any special assessment payable in annual installments, as authorized in chapter forty-nine, they shall have power to borrow upon the credit of the corporation a sum of money sufficient to pay the estimated cost and expense of the improvement, and shall have authority to issue bonds, notes, or certificates of indebtedness pledging the faith and credit of the corporation for the payment of the principal and interest of such bonds, notes, or certificates of indebtedness, said interest not to exceed the rate of seven per centum per annum, payable annually. All bonds, notes or certificates of indebtednes issued as aforesaid, shall have the name of the street or portion thereof so improved and for which the same were issued, legibly written or printed upon them, and shall be signed by the mayor and auditor or clerk, and be sealed with the seal of the corporation.

SEC. 667. *Bonds may have coupons attached.* Bonds issued as provided in this chapter may, in the discretion of the council, have interest coupons attached.

SEC. 668 *Character of bonds in certain cases.* Where the corporation is divided into districts for sewerage purposes, bonds issued for money borrowed to pay the expense of constructing or repairing sewers in any such district, shall have the name and number of the district for which they are issued legibly written or printed upon them.

SEC. 669. *Sale of bonds to be advertised.* Whenever bonds are issued under the provisions of this act to an amount exceeding ten thousand dollars, the sale thereof shall be advertised in at least one newspaper published in the corporation, or if no newspaper be published therein, then in some newspaper of general circulation in the corporation, for at least ten days previous to such sale. The advertisement shall specify that sealed bids will be received at a place, and until a day and hour designated. The bids shall then be opened and read in the presence of the bidders present, and the bonds shall be sold to the highest bidder, the corporation, however, reserving the right to reject all.

SEC. 670. *Bonds not to be sold below par.* In no case shall the bonds of the corporation be sold for less than their par value.[1]

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[1] Where a town was restrained from selling its stock for less than its par value, this did not prevent a sale on credit, provided the sales amounted to the par value of the stock. *Newark* v. *Elliott*, 5 O. S. 113.

SEC. 671. *Penalty for diverting funds from their legitimate use.* If any member of the council, or officer of the corporation, shall knowingly divert or appropriate any money borrowed, or bonds of the corporation, or any part of the proceeds thereof, to any purpose other than that for which such loan was made or such bonds issued, he shall, on conviction, be fined in any sum not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than twenty days nor more than six months, or both, at the discretion of the court.[1]

CHAPTER LIII.

SINKING FUND.[2]

SECTION.
672. Tax for creating a sinking fund.
673. Levy for sinking fund to be upon property of districts benefited.
674. Such levy to be certified to auditor.
675. Penalty for misappropriation of sinking fund.

SEC. 672. *Tax for creating a sinking fund.* For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of any municipal corporation, the council thereof may annually (until payment of the bonds and funded debt be fully provided for) levy and collect, in addition to the other taxes of said corporation, a tax not less than one mill and not exceeding three mills upon the property appraised and returned as provided by law, which shall be paid into the treasury, and be applied by order of the council, to the extinguishment of said bonds and funded debt, and to no other purpose whatever.

SEC. 673. *Levy for sinking fund to be upon property of districts benefited.* The levy to provide a sinking fund for the redemption of bonds issued for sewerage purposes, shall, where the corporation is divided into sewer districts, be upon the property of the district for which the bonds were issued.

SEC. 674. *Such levy to be certified to auditor.* The tax so levied shall be certified to the auditor of the county wherein the corporation is situated, to be placed on the county duplicate and collected as other taxes; such taxes shall be a lien on the property whereon they are assessed, the same as state and county taxes, and subject to the same penalties if delinquent.

SEC. 675. *Penalty for misappropriation of sinking fund.* If any member of the council, or officer of the corporation, shall knowingly divert or appropriate the tax or sinking fund raised under this act, to any other purpose than that to which it is by this act appro-

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[1] As to the rights of the corporation in case of the diversion or wrongful appropriation of any money or bonds, see the case of the *State* v. *Buttles*, 3 O. S. 309.

[2] Act of 1852, § 91, as amended March 28, 1861 (58 O. L. 46); March 11, 1853, § 11; May 3, 1861 (58 O. L. 114); March 14, 1867 (64 O. L. 52); February 24, 1865 (62 O. L. 31); April 13, 1867 (64 O. L. 148); March 31, 1864 (61 O. L. 134); March 28, 1864 (61 O. L. 72.)

priated, he shall, on conviction, be fined in any sum not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not less than twenty days nor more than six months, or both, at the discretion of the court.

CHAPTER LIV.

LEASE OR SALE OF CORPORATE PROPERTY.[1]

SECTION.
676. Lease or sale of corporate property authorized.
677. Disposition of fund so raised.
678. This chapter not applicable to certain classes of property.

SEC. 676. *Lease or sale of corporate property authorized.* The council of any city or incorporated village may, upon the recommendation of the board of improvements, lease or convey, in such manner and for such sum as may be provided by ordinance, any real estate or interest therein, any wharf or public landing, any buildings, and also dispose of any material from any street, alley, avenue, sewer, bridge, ship channel, public ground or park, belonging to the corporation.

SEC. 677. *Disposition of fund so raised.* The fund arising therefrom shall be paid into the corporation treasury; to the credit of the particular fund by which such property was acquired, if there be any such fund, and if no such fund exist, then to the general fund of the corporation.

SEC. 678. *This chapter not applicable to certain classes of property.* The provisions of this chapter shall not apply to the sale of school property, except with the concurrence of the board of education, nor of property acquired for infirmaries, houses of refuge and correction and work-houses, except with the concurrence of the directors of those institutions, nor of property acquired for water-works purposes, except with a concurrence of the trustees of water-works, nor of any real estate or the buildings thereon devoted to hospitals, or other like benevolent institutions owned or managed by the corporation.

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[1] Act of April 8, 1856 (4 Curwen, ch. 1632); April 3, 1867 (64 O. L. 108.) When there is no restraining clause in the charter of a corporation, it may dispose of any property which it has the right to acquire. *Newark* v. *Elliott*, 5 O. S. 113.

CHAPTER LV.

ANNEXATION OF TERRITORY TO A CITY OR INCORPORATED VILLAGE ON THE APPLICATION OF CITIZENS RESIDING THEREON.[1]

SECTION.
679. Annexation of adjacent territory.
680. Petitions for such annexation.
681. Proceedings thereon.
682. Report of transcript to council.
683. Rejection of application.
684. Proceedings on acceptance of application.
685. Notice of filing of petition to enjoin.
686. Notice of order of dismission, etc.
687. Stay of proceedings on order enjoining, etc.
688. Effect of acceptance of annexation.
689. Proceedings when territory lies in two or more counties.

SEC. 679. *Annexation of adjacent territory.* The inhabitants residing on any territory adjacent to any city or incorporated village, may, at their own option, be annexed to such city, or incorporated village, in the manner following:

SEC. 680. *Petitions for such annexation.* Application for such purpose shall be by petition, in writing, addressed to the commissioners of the county in which such territory is located, and shall be signed by a majority of the qualified freehold electors residing on said territory. It shall contain the name or names of some person or persons who are authorized to act as the agent or agents of the petitioners in securing such annexation, and shall fully describe the said territory, and be accompanied by an accurate map or plat thereof.

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[1] Act of 1852, §§ 9–13.

On the organization of a city of the second class divided into wards, the boundaries of which city are not coterminous with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate. *Halsey* v. *Ward*, 17 O. S. 543.

Under the statutes, cities of the second class are provided with assessors and supervisors of highways of their own; hence, by implication, electors of such city are not entitled to vote for those officers as officers of the township. *Ib.*

But in the offices of township trustees, clerk, treasurer, justices of the peace and constables, electors and tax-payers of the city have in some or in all respects a like interest with electors of the townships outside the city limits, and are entitled to a vote in the choice of them. And it would seem that where the township has not been divided into election precincts, under the act of March 4, 1853 (2 S. & C. 1573), the electors of the city are entitled to vote for the township officers last above named only at the general township polls of the township in which they respectively reside; and in cases where the township has been divided into precincts covering territory within the city limits, the electors of the city are entitled to vote for the officers last aforesaid only at the township poll of the precinct in which they respectively reside. *Ib.*

Under the act above referred to, county commissioners have power to so subdivide a township into election precincts, that the boundaries of the precinct shall correspond with those of the wards of a city within the limits of a township; and this, in *quo warranto*, will be presumed to have been done when nothing appears to the contrary, and it appears that the votes of city electors were cast for township trustees within their respective wards, "at the places properly fixed and designated for holding said election." *Ib.*

SEC. 681. *Proceedings thereon.* Such petition shall be presented to the board of commissioners at some regular session thereof, and when so presented, the same proceedings shall thereafter be had in all respects, as far as applicable, and the same duties in respect thereto shall be performed by the commissioners and other officers, as are required in the case of application to be organized into an incorporated village under the provisions of chapter two; and the final transcript of said commissioners, and the accompanying map or plat and petition, shall be deposited with the clerk of the city or incorporated village to which such annexation is proposed to be made, who shall file the same in his office.

SEC. 682. *Report of transcript to council.* At the next regular session of the council of such city or incorporated village, after the expiration of sixty days from the date of such filing, the said clerk shall report the said transcript and the accompanying map or plat and petition to said council, and thereupon such council shall, by resolution or ordinance, accept or reject the said application for annexation.

SEC. 683. *Rejection of application.* If the resolution or ordinance shall be to reject such application for annexation, then no further proceedings shall be had; but such rejection shall not be held to operate as a bar to any future application to the county commissioners on the same subject.

SEC. 684. *Proceedings on acceptance of application.* If the resolution or ordinance of the council be an acceptance of such application for annexation, then it shall be the duty of the clerk of such city or incorporated village to make out two copies of the petition and map or plat accompanying the same and transcript of the commissioners, and resolutions and ordinances in relation to such annexation, with a certificate that the same are correct, which certificate shall be signed by him in his official capacity, and be attested by the seal of such city or incorporated village, one of which copies he shall forthwith deliver to the recorder of the county, whose duty it shall be, having first made a record thereof in the proper books of record, to file and preserve the same, and the other of said copies shall be, by such clerk, forwarded to the secretary of state.

SEC. 685. *Notice of filing of petition to enjoin.* If the clerk, within sixty days from the date of the filing of such transcript, map or plat and petition in his office, shall receive notice from any person interested, that he has filed a petition to the court or judge to enjoin all further proceedings, he shall not then report to the council such transcript, map or plat and petition filed with him, until after the final hearing and disposition of said petition.

SEC. 686. *Notice of order of dismission, etc.* If the court or judge shall make an order dismissing such petition, the clerk of the county shall then immediately notify, in writing, the clerk of the corporation of the order made, and the clerk shall then at the next regular meeting of the council, report to the same such transcript, map or plat and petition accompanying the same, as if no such petition had been filed.

SEC. 687. *Stay of proceedings on order enjoining.* If the order of the court or judge be enjoining said clerk from making such report to the council as before provided, a certified copy of such order shall be immediately made by the proper officer of the court, and delivered to said clerk of the corporation, who shall file the same with such transcript, map or plat and petition, and preserve the same in his office, and thereupon no further proceedings shall be had in the matter; but such order of the court or judge shall not operate as a bar to any future application for the foregoing purpose to the commissioners of the county.

SEC. 688. *Effect of acceptance of annexation.* So soon as said resolution or ordinance, accepting such annexation, has been adopted, the said territory shall be deemed and taken to be a part and parcel of the city or incorporated village, and the inhabitants residing thereon shall have and enjoy all the rights and privileges of the inhabitants within the original limits of such city or incorporated village.

SEC. 689. *Proceedings when territory lies in two or more counties.* Where the corporation is situate in two or more counties, or where the territory to be annexed is situate in a different county from that in which the corporation or some part of it is situate, the proceedings, so far as practicable, shall be as directed in sections twenty-five and twenty-six of chapter two.

CHAPTER LVI.

ANNEXATION ON THE APPLICATION OF THE CORPORATION.[1]

SECTION.
690. Annexation on application of corporation.
691. Ordinance for annexation.
692. How application to be made.
693. Proceedings on petition.
694. Proceedings where territory lies in several counties, etc.
695. Effect of annexation completed.
696. Unnoticed errors and irregularities not to vitiate annexation.

SEC. 690. *Annexation on application of corporation.* When any municipal corporation, not an incorporated village for special

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[1] Act of 1852, § 14; February 15, 1867; 64 O. L. 14.

Proceedings to annex contiguous territory to the corporate limits of a town, in pursuance of the 14th section of the act to provide for the organization of cities and incorporated villages (Swan's Rev. Stat. 959), are not in contravention of the provisions of the Constitution. *Powers* v. *Commissioners of Wood County*, 8 O. S. 285. Swan, J.: "There is no constitutional provision upon this subject. The statute relating to a vote by the citizens of a municipal corporation, upon the question whether contiguous territory shall be annexed to the town, is simply for the purpose of determining whether an application shall be made to the County Commissioners to annex the territory; and they, finally, after hearing the parties in interest, decide upon the public policy of making the annexation. No right of property is involved or determined by the vote contemplated by the statute.

"The property, if annexed, will be subject to taxation to pay a prior indebtedness of the town of Perrysburg; and it is, therefore, claimed that private property will be thus taken for public purposes without compen-

purposes, shall desire to enlarge its corporate limits by the annexation of contiguous territory, it shall be done in the following manner:

SEC. 691. *Ordinance for annexation.* The council of the corporation, by the vote of not less than a majority of the members elected, shall pass an ordinance authorizing such annexation to be made, and directing the solicitor of the corporation, or some one else to be named in the ordinance, to prosecute the proceedings necessary to effect such annexation.

SEC. 692. *How application to be made.* Application for such purpose shall be by petition, in writing, of the corporation to the commissioners of the proper county, which petition shall set forth that under an ordinance of the council duly and legally passed, the territory therein described was authorized to be annexed to the corporation, and shall accurately describe such territory and be accompanied by an accurate map or plat thereof.

SEC. 693. *Proceedings on petition.* Upon such petition being presented to the commissioners, like proceedings thereon shall be had, in all respects, so far as applicable, as are required under the provisions of chapter fifty-five.

SEC. 694 *Proceedings where territory lies in several counties.* Where the corporation is situated in two or more counties, or when the territory to be annexed is situated in a different county from that in which the corporation or some part of it is situated, the proceed-

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sation. That injustice may be, and has, sometimes, been done by the annexation of territory to a town which has contracted an improvident debt, is, no doubt, true; and, sometimes, and perhaps more frequently, the owners of contiguous territory have had the benefit, by reflected value and convenience, of expenditures for which they have not contributed anything. The question is one beyond the reach of practical consideration, in the absence of any statute; and it would require a very artificial and unsound mode of reasoning to hold that territory could not be annexed to a town which owed debts, until the owners of such territory were paid a compensation in money for a proportional part of such debts, on the ground that the property annexed was condemned for public use." *Ib.*

By the original charter of the city of Toledo, it was bounded on the southeast by the center of the Maumee river, which is a navigable stream. Upon the petition of the corporation, pursuant to the provisions of the 14th section of the act to provide for the organization of cities and incorporated villages, the County Commissioners of Lucas county ordered an extension of its limits so as to include an unincorporated village and other adjoining lands on the southeast side of the river: *Held*,

That the territory so annexed was *contiguous* to the original city. *Blanchard* v. *Bissell*, 11 O. S. 96.

That such annexation might be ordered without the consent and against the remonstrance of a majority of the persons residing on the annexed territory. *Ib.*

Lands thus annexed are liable to local taxation on account of pre-existing city debts. *Ib.*

An order of annexation made by the County Commissioners in the exercise of jurisdiction acquired pursuant to statute, though liable to be reviewed and set aside by the Court of Common Pleas, is not *void*, and can not be collaterally impeached. *Ib.*

ings shall be in the county in which the territory to be annexed, or some part of it, is situate.

SEC. 695. *Effect of annexation completed.* When the annexation of such described territory has been completed, the same shall in law be deemed and held to be included in and constitute a part of such municipal corporation, and the inhabitants residing thereon shall have and enjoy all the rights and privileges of the inhabitants residing within the original limits of the corporation.

SEC. 696. *Unnoticed errors and irregularities not to vitiate annexation.* When any addition has been made to any corporation, and the same has been recognized as a part thereof, and has been taxed, and taxes thereon paid, and subjected to the ordinances and the authority of the council, without objection, such addition shall be deemed part of the corporation, and the inhabitants residing thereon citizens thereof, notwithstanding any errors, irregularities or defects in making such addition.

CHAPTER LVII.

ANNEXATION OF ONE MUNICIPAL CORPORATION TO ANOTHER MUNICIPAL CORPORATION.[1]

SECTION.		SECTION.	
697.	Annexation of contiguous corporations.	703.	Transcripts to be filed in office of recorder.
698.	Submission to vote of electors.	704.	Annexation complete, etc.
699.	Such submission by ordinances.	705.	One government, etc., for both corporations.
700.	Effect of affirmative vote.		
701.	Commissioners to arrange terms, etc.		
702.	Approval by ordinances.		

SEC. 697. *Annexation of contiguous corporations.* When any municipal corporation the territory of which shall be contiguous and adjoining the territory of another municipal corporation, shall desire to be annexed to such other corporation, such annexation shall be effected in the following manner:

SEC. 698. *Submission to vote of electors.* The trustees or council of the corporation proposing such annexation shall submit the question of such annexation to the qualified electors thereof, and the trustees or council of the corporation to which the annexation is proposed to be made shall also submit the same question to its qualified voters.

SEC. 699. *Such submission by ordinances.* Such submission shall be by ordinances adopted by the trustees or council of each corporation at least thirty days prior to the annual April or October election, at which election the vote shall be taken, and the ordinances shall each prescribe the manner in which such submission shall be made, and they shall be published in each corporation, by posters or otherwise, in such manner as the respective trustees or councils may deem most expedient, for the period of at least twenty days prior to the day fixed for such election.

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[1] Act of 1852, §§ 3–5, § 15, § 16.

SEC. 700. *Effect of affirmative vote.* If a majority of the qualified electors of each corporation voting on the question so submitted, at the same election, be in favor of such annexation, the trustees or council of each shall thereupon, within a reasonable time, cause the result to be certified to the other corporation.

SEC. 701. *Commissioners to arrange terms, etc.* The trustees or council of each corporation shall then appoint, by resolution or ordinance, three commissioners, whose duty it shall be to arrange the terms and conditions of such annexation, and report the result of their action, when agreed upon, to the trustees or council of their respective corporations.

SEC. 702. *Approval by ordinances.* When the report of such commissioners shall be approved by an ordinance passed by each corporation, certified copies thereof, signed by the presiding officer of the trustees or council of each corporation, and the respective clerks thereof, and attested by the corporate seal of each, shall be filed in the office of the clerk of the corporation to which such annexation is proposed to be made.

SEC. 703. *Transcripts to be filed in office of recorder.* It shall then be the duty of the clerk, under the direction of the corporation, to make out and certify two transcripts of all the ordinances, abstracts of the returns of the votes, and other papers relating to such annexation, one of which shall be filed in the office of the recorder of the county, who, having made a record thereof, shall file and preserve the same; and the other shall be forwarded by said clerk to the secretary of state.

SEC. 704. *Annexation complete, etc.* So soon as said transcripts shall be certified, delivered and forwarded, the annexation shall be deemed complete; and it shall be lawful for the corporation to which the annexation has been made, to pass such ordinances as will carry into effect the terms thereof, so far as the same shall not be inconsistent with this act and with the regular and proper government of the corporation under the provisions thereof, and any part of such terms so inconsistent shall be deemed void; but their nullity shall in no manner affect such annexation.

SEC. 705. *One government, etc., for both corporations.* When the annexation has been completed, the two former corporations shall thereafter be governed as one, embracing the territory of each; and the inhabitants of all such territory shall have equal rights and privileges; but such annexation shall not affect, or in any wise impair any rights or liabilities existing at the time of the annexation, either in favor of or against said corporations; and suits founded upon such rights and liabilities may be commenced, and pending suits prosecuted and carried to final judgment and execution, the same as though such annexation had not taken place.

CHAPTER LVIII.

SURRENDER OF MUNICIPAL RIGHTS.[1]

SECTION.
706. Surrender of municipal rights.
707. Petition therefor.
708. Notice, etc., of election.
709. What the ballots shall contain.
710. Poll-books and tally sheet.
711. To be opened, etc., by council.
712. Declaration on affirmative vote.
713. Certified transcripts to be made, etc.
714. Officers, etc., to continue until next election.
715. Villages may surrender in like manner.
716. Surrender not to affect accrued rights.
717. Disposition of taxes, etc., due at time of surrender.

SEC. 706. *Surrender of municipal rights.* Any city of the second class may surrender its corporate rights and be reduced to the grade of an incorporated village, in the following manner:

SEC. 707. *Petition therefor.* A petition for such purpose, signed by at least one hundred of the freehold electors of the corporation, shall be presented to the council, and it shall set forth that it is the desire of a majority of the citizens of the corporation to surrender their corporate rights and be reduced to the grade of an incorporated village, and it shall pray that an election be held to determine the sense of the legal voters upon the subject.

SEC. 708. *Notice, etc., of election.* The council shall thereupon fix upon a day and place for holding such election, and shall cause the clerk of the corporation to give notice thereof and the object of such election, in one or more newspapers published, and by posters set up in five or more public places, within the corporation, for the period of not less than twenty days next prior to the day of holding such election.

SEC. 709. *What the ballots shall contain.* The ballots cast at said election shall contain the words "for surrender," or "against surrender," and such election shall be held and conducted in the same manner and by the same officers as other elections in the corporation, and the laws of the state regulating elections shall govern the same so far as applicable.

SEC. 710. *Poll-books and tally sheet.* The officers holding such election shall, upon the close of the polls and counting out the ballots, forthwith certify and cause to be delivered to the clerk of the corporation, in a sealed envelope having indorsed thereon the nature of its contents, the poll-book and tally sheet of such election.

SEC. 711. *To be opened, etc., by council.* The clerk, upon receiving such poll-book, shall file and preserve the same in his office until the next regular meeting of the council, and the council at such meeting shall cause the said poll-book to be opened and the result of such election to be entered on its journal.

SEC. 712. *Declaration on affirmative vote.* If the majority of votes cast at said election shall be "for surrender," then the council shall, by resolution, declare in effect that, by the determination of legal voters, at a special election held for such purpose, the corporate rights

[1] Act of March 10, 1856 (4 Curwen, ch. 1658); May 1, 1857 (4 Curwen, ch. 1740.)

of such corporation are surrendered, and such city is reduced to the grade of an incorporated village, and shall thereafter be known as the incorporated village of ———.

SEC. 713. *Certified transcripts to be made, etc.* The clerk shall thereupon cause two certified transcripts of said resolution to be made out, one of which he shall forthwith deliver to the recorder of the county, and which shall be by him recorded in the proper book of records in his office, and the other shall be, by said clerk, forwarded to the secretary of state.

SEC. 714. *Officers, etc., to continue till next election.* All the officers elected or chosen as officers of such corporation, shall continue in office and perform their duties as though no such surrender had been made until the next regular election, and until the officers of the new corporation are elected and qualified, and the wards of such city corporation shall remain and the ordinances thereof shall continue in force, except so far as such ordinances may be inconsistent with the powers granted incorporated villages, until changed or repealed by the council of the new corporation.

SEC. 715. *Villages may surrender in like manner.* Incorporated villages may surrender their corporate rights, or may be reduced to the grade of incorporated villages for special purposes, and incorporated villages for special purposes may surrender their corporate rights in the same manner, so far as applicable, as provided in the preceding sections in this chapter for the surrender of corporate rights by cities of the second class, and the duties of all officers in respect thereto, and the proceedings thereafter, so far as applicable, shall be the same as prescribed in the preceding section. Where the petition is by the electors of an incorporated village for special purposes, it shall be sufficient if signed by fifty of such electors.

SEC. 716. *Surrender not to affect accrued rights.* The surrender of corporate rights as herein provided, shall not be held to affect rights accrued or liabilities incurred, by such corporations, or the power to settle claims, dispose of property, levy and collect taxes to discharge liabilities incurred, but the same shall remain in full force and effect, as also the corporate character of such city, or incorporated village, or incorporated village for special purposes, in respect thereto, as though no surrender had been made.

SEC. 717. *Disposition of taxes, etc., due at time of surrender.* All taxes which, at the time of such surrender, remain due and unpaid, and all moneys in the treasury of such city, incorporated village, or incorporated village for special purposes, shall be collected and applied to the objects for which the same were raised; and in case any moneys shall remain on hand after the debts and liabilities of the corporation shall have been discharged, the same shall be paid into the treasury of the incorporated village, or incorporated village for special purposes, or into the common school fund of the district embracing such corporation, as the case may be, and all property owned by the corporation, at the time of such surrender, by purchase or otherwise,

shall become the property of the new corporation or of the school district, as the case may be, and the title thereto vest accordingly.

CHAPTER LIX.

DUTIES OF STATE OFFICERS AND RIGHT OF VISITATION.[1]

SECTION.
718. Duty of state officers to ascertain grade of cities, etc.
719. Secretary of state to cause publication thereof.
720. Advance of grade to be submitted to vote.
721. Papers to be preserved in office of secretary of state.
722. Statement thereof to be submitted in his annual report.
723. Declaration of advancement or reduction of grade to be published.
724. Right of visitation by governor, legislature, etc.

SEC. 718. *Duty of state officers to ascertain grade of cities, etc.* It shall be the duty of the governor, auditor and secretary of state, or any two of them, at the time of ascertaining the ratio of representation, as required by the eleventh section of the eleventh article of the constitution of this state, to ascertain what cities of the second class are entitled to become cities of the first class, and what incorporated villages are entitled to become cities, and their proper class, and what incorporated villages for special purposes are entitled to become incorporated villages.

SEC. 719. *Secretary of state to cause publication thereof.* The secretary of state shall cause a statement thereof to be prepared, which statement he shall cause to be published in some newspaper in Columbus, and also in some newspaper published in each of the cities, incorporated villages, and incorporated villages for special purposes, which shall contain the required population to be advanced in grade, and a copy of said statement shall also be transmitted by the secretary of state to the general assembly, at its next session thereafter.

SEC. 720. *Advance of grade to be submitted to vote.* So soon as the said statement has been published, the council of any corporation which, according to such statement, shall have the required population to be advanced to a corporation of the next higher grade, shall have the power, at any time, by ordinance passed for such purpose, to submit to the voters of the corporation, the question whether such corporation shall be advanced to the grade of the next higher corporation; and such election shall be conducted and the proceedings thereafter had, in case the result of the election be in favor of such advancement, in all respects, as provided in chapters three and four of this act.

SEC. 721. *Papers to be preserved in office of secretary of state.* The secretary of state shall receive and preserve in his office all papers transmitted to him in relation to the organization of incorporated villages for special purposes, incorporated villages, the annexation of

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[1] Act of 1852, § 42, as amended March 25, 1854.

territory to any city or incorporated village, and the consolidation or advancement or reduction in grade of municipal corporations.

SEC. 722. *Statement thereof to be submitted in his annual report.* He shall also submit, in his annual report to the general assembly, a statement showing the names, location and limits of each incorporated village for special purposes, and each incorporated village organized under this act during the period embraced in said report; and also all incorporated villages and cities, the limits of which have been increased, and the limits so added, and the corporations which have been advanced or reduced in grade during the same period.

SEC. 723. *Declaration of advancement or reduction of grade to be published.* Whenever any incorporated village for special purposes has been advanced to the grade of an incorporated village, in the manner provided in chapter three, or any incorporated village has been advanced to the grade of a city of the second class, or any city of the second class has been advanced to the grade of a city of the first class, in the manner provided in chapter four, or any municipal corporation has been reduced to a corporation of a lower degree, the secretary of state, upon requisite evidence of the fact being filed in his office, shall cause a notice to be published in one of the newspapers of Columbus, declaring such municipal corporation has been advanced or reduced in grade as the case may be.

SEC. 724. *Right of visitation by governor, legislature, etc.* The general assembly of Ohio, by a committee, the governor of the state, the council of the corporation by a committee, the mayor or police judge of the corporation, the judges of any of the courts of this state, and the grand jury of the county, may, at any time, visit and inspect any of the benevolent or correctional institutions established by any municipal corporation, and examine the books and accounts of the same.

CHAPTER LX.

SAVING OF EXISTING RIGHTS.[1]

SECTION.
725. Existing rights, etc., not to be changed by this act.
726. Powers and duties in relation to election of justices, etc., to remain until changed by law.
727. Vested powers in relation to benevolent institutions, etc., to continue.
728. Officers of corporations to continue during their terms, etc.
729. Ordinances, etc., to continue in force.
730. Acts, courts, etc., not inconsistent with this act, to remain until changed by proper authority.

SEC. 725. *Existing rights, etc., not to be changed by this act.* All rights and property, of every kind and description, which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization made by this act; and no rights or liabilities, either in favor of or against such corporation, existing at the time of taking

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[1] Act of 1852. §§ 106, 107, 108, 109.

effect of this act, and no suit or prosecution of any kind, shall be in any manner affected by such change, but the same shall stand or progress as if no such change had been made; provided, that where a different remedy is given in this act, which can be made applicable to any rights existing at the time of its passage, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

SEC. 726. *Powers and duties in relation to election of justices, etc., to remain until changed by law.* Any municipal corporation which, under its former organization, held or exercised any power or duty, in ordering or directing the election of justices of the peace, constables, or other township officers, shall continue to hold and exercise such power and duty until otherwise provided by law.

SEC. 727. *Vested powers in relation to benevolent institutions, etc., to continue.* Any municipal corporation in which, under its former organization, any law or charter, regulating any literary, charitable or benevolent institution, vests any power appointing officers of supervision or control, shall continue to hold and possess the like power and authority in every respect.

SEC. 728. *Officers of corporations to continue during their terms, etc.* The mayor, trustees, marshal, treasurer, and all officers elected by the people, or appointed by any municipal corporation, and all officers of benevolent and other institutions, now in office, shall remain and continue in their respective offices, and perform the several duties thereof, under the provisions of this act, until the time shall expire for which they shall have been elected or appointed, and until their successors shall be chosen or appointed and qualified; but all such officers shall be subject to such rules and regulations touching their duties and compensation, as the proper authority of any municipal corporation may provide.[1]

SEC. 729. *Ordinances, etc., to continue in force.* All laws, ordinances and resolutions heretofore lawfully passed and adopted by the trustees or council, shall be, remain, and continue in force, until altered or repealed by the trustees or council established by this act.

SEC. 730. *Acts, courts, etc., not inconsistent with this act, to remain until changed by proper authority.* All special acts in relation to any municipal corporation shall, so far as the same affects the particular police regulations, or local affairs of any municipal corporation, in matters not inconsistent with this act, be and remain in force as by-laws and ordinances of the particular municipal corporation, until altered or repealed by the proper authority thereof. The police courts and mayor's courts heretofore created and established, are hereby continued, with the powers and jurisdictions conferred by this act.

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[1] The design of permitting an officer to hold his office *until his successor shall be elected and qualified*, "undoubtedly was, that there should be no vacancy for the reasonable time that it would take to have the successor notified of his election and qualified." Hitchcock, J., in *State* v. *Crooks*, 7 O. 2 pt. 221–226.

NOTE.—The power of the courts, as courts of equity, to enforce specific performance, and to interfere by injunction or restraining order, as between the municipal corporation and others, was considered in a number of the cases to which reference has been made in this volume. Thus, in the case of *Cincinnati* v. *Cincinnati Street R. Co.*, ante, 98 *et seq.*, and the facts of which are sufficiently stated at that place, Judge Taft said:

"Is, then, the city entitled to have this obligation enforced by a decree for specific performance?

"The contract sought to be enforced is peculiar, but it is specific, and the thing required under it and the act of congress is easily understood, and calls for no particular skill to perform it. It is simply to furnish on the cars, tickets in packages of twenty-five, for not more than $1.03. It involves no new duties in kind, but precisely the same care and responsibility to which the companies have subjected themselves, for at least a large part of their past existence. The companies have been in full possession of all the advantages of the contract.

"The city is the representative of the public, and as such, had the right to require this stipulation as part of the contract. The stipulation is in favor of the public. If the companies are allowed to violate it by exacting from each passenger a few cents more than they are entitled to, or by refusing to sell packages according to the contract, there can be no remedy to the parties who suffer the wrong, except by a multiplicity of suits for small sums, which could not be fairly considered an adequate remedy, and which falls under a legitimate head of equity jurisdiction. *Sutton Har. Imp. Co.* v. *Hitchins*, 9 E. L. & Eq. R., 43–4.

"I think that the nature of this stipulation is such, that specific performance is the only adequate remedy for its violation.

"Judge Story says: 'The ground of the jurisdiction of courts of equity to decree specific performance of agreements is, that a court of law is inadequate to decree a specific performance, and can relieve the injured party only by a compensation in damages, which, in many cases, would fall far short of the redress which his situation might require. Wherever, therefore, the party wants the thing *in specie*, and he can not otherwise be fully compensated, courts of equity will grant him a specific performance.' 1 Story's Equity, sec. 716.

"Such is the general principle on which courts of equity act in cases of this kind. 'It does not proceed upon any distinction between real estate and personal estate; but upon the ground that damages at law may not, in the particular case, afford a complete remedy.' But, as in contracts relating to personal estate and personal acts, damages at law do, in most instances, afford an adequate remedy, the cases for specific performance generally relate to land.

"Whether these contracts be considered as relating to an easement in real estate, or to personal estate, or personal acts, no action for damages at law could be an adequate remedy.

"This case I think distinguishable from that of the *Port Clinton Railroad Co.* v. *The Cleveland and Toledo Railroad Co.* (13 O. S. 544), in the important circumstance that there is no continuous skill, or unusual risk, or ability, or responsibility, required in the performance of this contract. There is not even any outlay of capital required. It is simply a question of will.

"In the Port Clinton Railroad Company case, it was sought to compel the Cleveland and Toledo Railroad Company, to equip, repair, and operate a railroad. After a very discriminating and able opinion, the court, in that case, said: 'We think enough has been said to show that the propriety of the exercise of the power to enforce specific performance, in cases like the present, is exceedingly questionable, and would require extreme care and delicacy in its application. If permissible at all, the demand for the exercise of the power should be stringent, and the circumstances of the case so peculiar, as to authorize some limit to the extent and operations of any orders which might be made.'

"The court then proceeded to examine the facts of the case, and found that the Port Clinton Company, the plaintiff in one of the cases, (for there were two cases comprised in one decision), had a very dubious case in equity, having nothing of any pecuniary value, in rights or franchises, and the court 'could not shut their eyes to the fact, transparent in the testimony, that the Port Clinton Company itself, and the operations in its name, were a device and a means to accomplish an unlawful purpose.' And the court concluded that the plaintiff had 'no such standing in the court, or any such interests to be protected, as would support its claim for relief.'

"And as to the trustees of Portland township, who were plaintiffs in the other case, the court found the contract upon which they relied not valid, to give them any right to the thing, for which they sought the remedy; so that the court actually decided the case, almost, if not quite, independently of the question of remedy. Nor did the court positively decide, that if the right had been clear, 'and the demand for the exercise of the power had been stringent,' they might not, for a limited time, even operate a railroad. The opinion, however, shows that the court would require a very strong and a very peculiar case, before it would venture upon so difficult a task.

"I have examined with some care the opinion in that case and the cases cited and commented upon by the learned judge who gave it. I have found it altogether the most satisfactory discussion of the cases on the subject, with which I have met. But I am not able to derive from it evidence, that the Supreme Court would deny an injunction in a case like this.

"It seems to me very clear, that there can be no adequate remedy for a violation of this stipulation, but specific performance. Suppose the city were to receive heavy damages from the company? Or suppose it were possible to estimate accurately the amount of moneys which had been or might be taken from the passengers in violation of this contract, how could the city distribute the fund either to those from whom it was taken, or apportion it among those who form part of the public, and who suffer damages by this breach of contract?

"Any other adequate remedy seems to me quite out of the question, unless it could be reached by *mandamus*. The point has not been made, that this petition should not be sustained as a petition for specific performance, on the ground that a *mandamus* would be an adequate legal remedy.

"If this be a case for specific performance of a contract, and if it be also a case calling for a provisional order, the delay which would be incident to relief by *mandamus*, might be a sufficient reason for entertaining jurisdiction in this court.

"2. But is this a case for the provisional remedy by injunction at the commencement of the suit?

"It seems to me that it would be quite impossible to make any even approximate estimate of the damages which would arise from the violation of the contract complained of, and it would be equally impossible to ascertain what should be done with them, when recovered.

"On the other hand, if an injunction is allowed, and the city gives the proper bond, and it shall turn out that the injunction is wrongly granted, the defendants will be able at least to approximate the amount of their loss through the limitation on their fares for the time; and when ascertained, it would be easy to know who should pay, and who should receive the money.

"Another consideration in this connection is, that the wrong complained of in the present case arises from an abuse of corporate powers—powers granted by the public, and to be held and exercised by these corporations for the benefit of the public, as well as for the private profit of the stockholders.

"It is said by the Supreme Court, in *Walker* v. *Mad River Railroad Co.*, 8 O. 39: 'The great recent increase of private corporations has led our

courts of chancery into an enlarging jurisdiction over them, and it is now well settled that injunctions will be granted to prevent the abuse of their powers to the injury of others.' The same principle is laid down in 2 Story's Equity, sec. 627, and in *Coates* v. *The Clarence Railroad Co.*, 1 Russ & Mylne, 181.

"It is true that in the Port Clinton case, a corporation was before the court as defendant, as is suggested by the counsel for defendants. But the court found there was no good case in law or equity, made out against the defendant, and no abuse of corporate powers by the defendant corporation, of which the plaintiffs had any ground in law or equity to complain.

"The objection to the mandatory form of the order prayed for, has not been seriously urged. Mr. Redfield, in his work on Railways, says, p. 511: 'It has been held that it is no objection to an injunction that it was in effect of a mandatory character;' and on p. 512 he says: 'Notwithstanding the practice has been questioned sometimes, it has continued to receive the countenance of the courts of equity. A mandatory order is nothing more than a decree of specific performance, which is every day's practice in courts of equity, and which is seldom denied, unless where the law is perfectly adequate.' *Spencer* v. *Loudon, etc., Railways*, 1 Railway Cases, 167, 171.

"As I have already remarked, this case is peculiar, and I find none in the books precisely like it. But, upon the best consideration I have been able to give to the subject, aided by very able and well considered arguments, and with the assistance and concurrence of my brethren of the bench, who, at my request, sat with me at the hearing—Judge Storer hearing all the arguments, and the other judge hearing a large portion of them—I have come to the conclusion that the case falls within the equity jurisdiction of the court, and that the plaintiff is entitled to the remedy sought. The simplest form of the order would be mandatory, requiring the companies to keep on their cars package tickets for sale, at the rate of twenty-five for $1.03. But, to conform with the definition of an injunction given in the code, I will allow a provisional order restraining the defendants from selling tickets in packages of twenty-five for more than $1.03, and from demanding or collecting fare from any person to whom they shall refuse to sell, on the cars, package tickets at that rate, such person having tendered to their conductor or agent on the car, $1.03 in lawful money for such package; and from hindering, while they so refuse, any such person from riding on their cars:—upon the city giving bond in the sum of $20,000 to each company, to indemnify it for all it might lose, if it should turn out that I am wrong, and that the injunction ought not to have been issued."

By a resolution of the city council, adopted January 29, 1869, it was resolved, that the city auditor should be authorized and instructed to contract with James E. Cox, for the use of the public lamp-posts in the streets of the city, for advertising purposes, for the term of five years, at the sum of three dollars and fifty cents per year for each post so used by him. It appeared, from a model, that the advertising instrument was about eighteen inches in length, of octangular shape, and would inclose the entire surface of the post within its dimensions. It was furnished with small recesses, in which advertisements might be inserted. Each instrument might contain forty or fifty advertisements, representing separate occupations and trades. *Held*, per Storer, J., that it was beyond the power of the city council to authorize such contract to be made, and on the petition of property-holders in the city, a proper case was presented where the city auditor could be restrained from executing the contract. *Shillito* v. *Cincinnati*, Superior Court of Cincinnati, 1869. MS.

In the case of *Fenton* v. *Cincinnati*, *ante*, 154, Storer, J., said: "As the inevitable result of the work thus projected, we are satisfied from the proofs before us, as well as the condition of the premises, the plaintiff's building will fall, or be so impaired in its integrity from the cracking of its walls, or the sinking of the soil, that it will become necessary to take it down and re-erect it. Should such an event occur, we must hold the defendants

liable in damages. They have not only hazarded the safety of all the structures along the line of the alley by the excavation, but by digging below the surface, beyond the point authorized by law, have assumed all the responsibility of the result. If, when an injury is done, the individual suffering may recover to the extent of his loss, it follows he must have the additional right to invoke our preventive aid by injunction to secure his possession. It can not be claimed that a corporation possesses a higher immunity from liability than an individual, when the question is made how far the owner and proprietor of a dwelling-house is to be protected in its enjoyment. He may well ask the judicial tribunals to defend his domicil from individual as well as public aggression."

CHAPTER LXI.

ACTS REPEALED.

SECTION.
731. List of acts repealed.
732. When this act to take effect.

SEC. 731. *List of acts repealed.* The following acts and parts of acts are hereby repealed:

An act to provide for the organization of cities and incorporated villages, passed May 3, 1852. 3 Curwen, ch. 1184.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 30, 1859. 4 Curwen, ch. 1987.

An act to amend "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and supplementary and amendatory to 'an act to provide for the organization of cities and incorporated villages, passed March 11, A. D. 1853,'" passed April 28, 1854. 4 Curwen, ch. 1460.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 6, 1857. 4 Curwen, ch. 1681.

An act to amend an act entitled "an act to amend an act entitled 'an act to provide for the organization of cities and incorporated villages,' passed March 11, 1853," passed April 12, 1858. 4 Curwen, ch. 1880.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed April 17, 1857. 4 Curwen, ch. 1787.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed April 5, 1856. 4 Curwen, ch. 1577.

An act to amend an act entitled "an act to amend an act entitled an act to provide for the organization of cities and incorporated villages, passed March 11, 1853," passed March 25, 1854. 4 Curwen, ch. 1438.

An act to amend the forty-fourth section of an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed April 2, 1859. 4 Curwen, ch. 2004.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages," passed March 11, 1853. 3 Curwen, ch. 1248.

An act supplementary to the "act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 12, 1853. 3 Curwen, ch. 1251.

An act to amend section fifty-four of the act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 4, 1859. 4 Curwen, ch. 1933.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed May 1, 1854. 4 Curwen, ch. 1506.

An act amendatory to an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 18, 1859. 4 Curwen, ch. 1456.

An act to amend the seventy-first section of the act entitled "an act to provide for the organization of cities and incorporated villages, passed March 1, 1852," passed April 17, 1854. 4 Curwen, ch. 1451.

An act to amend the sixty-first and seventy-seventh sections of the act entitled "an act to provide for the organization of cities and incorporated villages. And the thirteenth section of an act entitled an act to provide for the organization of cities and incorporated villages, passed March 11, 1853," passed April 29, 1854. 4 Curwen, ch. 1470.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed April 8, 1856. 4 Curwen, ch. 1632.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and the several acts amendatory thereof and supplementary to said acts," passed April 5, 1856. 4 Curwen, ch. 1571.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and the act amendatory thereto, passed March 11, 1853," passed May 1, 1854. 4 Curwen, ch. 1475.

An act to amend section six of an act to amend the act entitled "an act to provide for the organization of cities and incorporated villages, passed March 11, 1853," passed March 28, 1859. 4 Curwen, ch. 1978.

An act to amend the eighth section of an act entitled "an act to amend the act entitled an act to provide for the organization of cities and incorporated villages," passed March 5, 1856. 4 Curwen, ch. 1541.

An act to amend the act entitled "an act to amend the act entitled an act to provide for the organization of cities and incorporated villages, passed March 11, 1853, and supplementary to the same," passed March 30, 1857. 4 Curwen, ch. 1702.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, and the act amendatory

thereto, passed March 11, 1853," passed April 29, 1854. 4 Curwen, ch. 1463.

An act to amend the act entitled "an act to provide for the organization of cities and incorporated villages, and the act amendatory thereto, passed March 11, 1853," passed April 8, 1856. 4 Curwen, ch. 1598.

An act supplementary to the act "to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 12, 1853. 4 Curwen, ch. 1251.

An act providing for the certifying of certain elections, passed April 3, 1837. 1 Curwen, ch. 163.

An act supplementary to an act entitled "an act to amend an act to provide for the organization of cities and incorporated villages, passed March 11, 1853," passed April 5, 1854. 4 Curwen, ch. 1439.

An act to regulate the making of cellars, excavations and foundations, passed April 28, 1854. 4 Curwen, ch. 1462.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and 'an act to amend the act entitled an act to provide for the organization of cities and incorporated villages,' passed March 11, 1853," passed May 1, 1854. 4 Curwen, ch. 1475.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 1, 1854. 4 Curwen, ch. 1511.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and the several acts amendatory thereof and supplementary to said acts," passed April 5, 1856. 4 Curwen, ch. 1572.

An act to amend a certain act therein named, passed April 8, 1856. 4 Curwen, ch. 1647.

An act supplementary to an act entitled "an act supplementary to an act entiltled 'an act to provide for the organization of cities and incoporated villages,' passed May 3, 1852," and the acts amendatory thereof and supplementary thereto, passed May 1, 1857. 4 Curwen, ch. 1740.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the acts amendatory thereof and supplementary thereto, passed March 10, 1856. 4 Curwen, ch. 1658.

An act to amend "an act to provide for the organization of cities and incorporated villages, passed May 2, 1852," passed April 12, 1858. 4 Curwen, 1856.

An act amendatory and supplementary to an act passed April 5, 1856, entitled "an act to amend an act entitled an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the several acts amendatory thereof and supplementary to said acts, passed April 12, 1858. 4 Curwen, ch. 1857.

An act supplementary to an act to provide for the organization of

cities and incorporated villages, passed May 3, 1852, passed February 23, 1858. 4 Curwen, ch. 1813.

An act to authorize incorporated villages to take the enumeration of their inhabitants for the purpose of becoming cities of the second class, passed April 5, 1856. 4 Curwen, ch. 1571.

An act supplementary to an act entitled "an act defining the jurisdiction and regulating the practice of probate courts," passed April 3, 1856. 4 Curwen, ch. 1567.

An act supplementary to an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed February 28, 1859. 4 Curwen, ch. 1929.

An act to provide for the appointment of police commissioners in cities of the first class, having a population exceeding eighty thousand inhabitants, and supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the other acts supplementary and amendatory thereto, passed March 14, 1859. 4 Curwen, ch. 1951.

An act relating to cities of the first class, having a population exceeding eighty thousand inhabitants, passed March 5, 1860. 4 Curwen, ch. 2068.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages," passed March 11, 1853, passed March 17, 1860. 4 Curwen, ch. 2096.

An act to enable townships and incorporated villages to establish cemeteries common to both, passed March 17, 1860. 4 Curwen, ch. 2095.

An act authorizing city councils in cities of the first class, having a population less than eighty thousand and more than thirty-five thousand, to appoint inspectors of provisions and other articles, passed April 4, 1859. 4 Curwen, ch. 2014.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 16, 1867. 64 O. L. 244.

An act to amend section twenty-one of "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed May 5, 1868. 65 O. L. 147.

An act to amend the forty-seventh section of the act entitled "an act to provide for the organization of cities and incorporated villages," passed March 12, 1862. 59 O. L. 23.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed February 5, 1861. 58 O. L. 6.

An act to amend section fifty of an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and to authorize the council of incorporated villages to levy a tax for police purposes, passed February 21, 1867. 64 O. L. 21.

An act to further amend the sixty-first section of the act entitled "an act to provide for the organization of cities and incorporated villages,"

passed May 3, 1852, and amended by an act passed April 29, 1854, passed February 9, 1863. 60 O. L. 4.

An act to amend section sixty-nine of an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, as amended March 25, 1862, and to repeal section one of the last named act; also further to define the duties of county treasurers, passed April 29, 1862. 59 O. L. 69.

An act to amend section six (6) of "an act to amend section sixty-nine (69) of an act entitled 'an act to provide for the organization of cities and incorporated villages,' passed May 3, 1852, as amended March 25, 1862, and to repeal section one of the last named act; also further to define the duties of county treasurers, passed April 29, 1862," passed May 13, 1868. 65 O. L. 186.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 10, 1867. 64 O. L. 121.

An act to amend section ninety-one of the act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed March 28, 1861. 58 O. L. 46.

An act to amend section number one hundred and two of the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 18, 1862. 59 O. L. 55.

An act to amend section eighty-three of an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 29, 1862. 59 O. L. 70.

An act to amend section eighty-four of "an act to provide for the incorporation [organization] of cities and incorporated villages," passed May 3, 1852, passed April 10, 1867. 64 O. L. 121.

An act to amend an act passed April 28, 1854, entitled "an act to amend section twenty-five of an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 16, 1867. 64 O. L. 214.

An act to amend an act entitled "an act to enable justices of the peace to discharge the duties of police judges in certain cases," passed February 21, 1862, passed April 17, 1867. 64 O. L. 251.

An act to amend an act therein named, passed March 21, 1861. 58 O. L. 39.

An act relating to cities of the first class having a population less than eighty thousand, passed March 1, 1861. 58 O. L. 25.

An act to amend an act entitled an act relating to cities of the first class having a population less than eighty thousand, passed March 1, 1861, passed May 3, 1861. 58 O. L. 114.

An act to amend section one of an act entitled "an act supplementary to an act to provide for the organization of cities and incorporated villages," passed April 12, 1865, passed April 3, 1867. 64 O. L. 108.

An act to amend an act entitled "an act to amend section four of an act entitled an act supplementary to an act entitled an act to pro-

vide for the organization of cities and incorporated villages," passed April 13, 1865, passed February 21, 1866. 63 O. L. 22.

An act to amend an act entitled "an act supplementary to an act entitled 'an act to provide for the organization of cities and incorporated villages,'" passed March 29, 1859, as amended by an act passed March 25, 1864, passed March 23, 1866. 63 O. L. 49.

An act to amend section six of an act passed March 14, 1859, entitled "an act to provide for the appointment of police commissioners in cities of the first class having a population exceeding eighty thousand inhabitants," and supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the other acts supplementary and amendatory thereto, and further amended February 17, 1864, passed March 9, 1866. 63 O. L. 33.

An act to license and regulate pawnbrokers in cities of the first and second class, passed March 13, 1863. 60 O. L. 16.

An act to authorize the city councils to appoint inspectors of beef cattle, sheep, hogs, poultry, game, milk, milk cows, fresh meat and fresh fish, passed March 11, 1867. 64 O. L. 46.

An act supplementary to the act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed April 10, 1861. 58 O. L. 92.

An act supplementary to the act passed May 3, 1852, to provide for the organization of cities and incorporated villages, passed April 10, 1861. 58 O. L. 77.

An act supplementary to "an act supplementary to the act passed May 3, 1852, to provide for the organization of cities and incorporated villages," passed April 10, 1861, passed March 30, 1864. 61 O. L. 88.

An act to amend section one of "an act supplemental to an act passed May 3, 1852, to provide for the organization of cities and incorporated villages," passed March 31, 1864, passed April 12, 1865. 62 O. L. 136.

An act supplementary to an act passed May 3, 1852, to provide for the organization of cities and incorporated villages, passed March 31, 1864. 61 O. L. 130.

An act to amend an act entitled "an act to amend an act entitled 'an act to provide for the organization of cities and incorporated villages,' passed May 3, 1852, and the several acts amendatory thereof and supplementary to said act," passed April 5, 1856, passed April 3, 1863. 60 O. L. 51.

An act to regulate the meetings of councils in cities of the first class, exceeding eighty thousand inhabitants, and to repeal sections 1, 12, 14 and 17 of an act passed March 3, 1860, entitled "an act relating to cities of the first class, having a population exceeding eighty thousand inhabitants, passed April 4, 1862. 59 O. L. 40.

An act to regulate meetings of councils in cities of the first class, having a population exceeding one hundred thousand inhabitants, and to repeal section two of an act passed April 4, 1862, entitled "an act

relating to cities of the first class, having a population exceeding eighty thousand inhabitants," passed May 5, 1868. 65 O. L. 127.

An act to create a board of health in any city, and to prevent the spread of diseases therein, passed March 29, 1867. 64 O. L. 76.

An act supplementary to an act entitled "an act to create a board of health in any city to prevent the spread of diseases therein," passed March 29, 1867, passed April 13, 1867. 64 O. L. 147.

An act to arrest the social evil in cities of the first class having over one hundred thousand inhabitants, passed April 16, 1867. 64 O. L. 242.

An act defining the duties and powers of the board of city improvements, passed April 27, 1868. 65 O. L. 110.

An act supplementary to the act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed April 3, 1867. 64 O. L. 106.

An act supplementary and amendatory to an act passed April 5, 1856, entitled "an act to amend an act entitled 'an act to provide for the organization of cities and incorporated villages,' passed May 3, 1852," and the several acts amendatory thereof, and supplementary to said acts, passed March 31, 1864. 61 O. L. 132.

An act supplementary to the act entitled "an act amendatory and supplementary to an act passed April 5, 1856, entitled 'an act to amend an act entitled an act to provide for the organization of cities and incorporated villages,'" passed May 3, 1852, and the several acts amendatory thereof and supplementary to said acts, passed March 31, 1864, passed March 20, 1866. 63 O. L. 42.

An act supplementary to an act entitled an act to provide for the organization of cities and incorporated villages, passed April 8, 1856, passed April 5, 1866. 63 O. L. 133.

An act to limit the lien of assessments made by municipal corporations to defray the expenses of improvements, passed March 29, 1867. 64 O. L. 75.

An act supplementary to an act entitled "an act supplementary to 'an act to provide for the organization of cities and incorporated villages,'" passed April 5, 1866, passed May 15, 1868. 65 O. L. 199.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 16, 1867. 64 O. L. 215.

An act supplementary to an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed March 16, 1865. 62 O. L. 45.

An act to amend an act passed March 16, 1865, entitled "an act supplementary to an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed February 15, 1867. 64 O. L. 16.

An act supplementary to the act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and to repeal a certain act therein named, passed April 16, 1867. 64 O. L. 241.

An act supplementary to the act to provide for the creation and reg-

ulation of incorporated companies in the state of Ohio, passed May 1, 1852, passed April 6, 1866. 63 O. L. 187.

An act to protect the interest of turnpikes and plank roads, passed May 1, 1861. 58 O. L. 113.

An act to authorize the town councils of certain incorporated villages to improve certain highways, passed April 16, 1867. 64 O. L. 249.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed May 13, 1868. 65 O. L. 187.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and to regulate and establish the grade of wharves and landing places in cities containing a population exceeding eighty thousand inhabitants, passed January 30, 1863. 60 O. L. 3.

An act to authorize cities to appropriate land for levees, passed April 10, 1867. 64 O. L. 123.

An act to authorize certain cities to issue bonds for the purpose of protecting themselves from floods, passed February 27, 1867. 64 O. L. 26.

An act supplementary to an act entitled an act to amend an act entitled an act to provide for the organization of cities and incorporated villages, passed March 11, 1853, and the act amendatory thereof, passed April 29, 1854, passed February 19, 1866. 63 O. L. 18.

An act supplementary to an act entitled "an act to amend an act entitled an act to provide for the organization of cities and incorporated villages," and the act amendatory thereto, passed March 11, 1853, passed April 29, 1854, passed March 28, 1864. 61 O. L. 71.

An act to amend an act supplementary to an act entitled "an act to amend an act entitled an act to provide for the organization of cities and incorporated villages," passed March 28, 1864, passed March 29, 1866. 63 O. L. 61.

An act supplemental to an act entitled an act amendatory and supplemental to an act passed April 5, 1856, entitled an act to amend an act entitled an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the several acts amendatory thereof and supplemental to said acts, passed April 12, 1858, passed April 4, 1861. 58 O. L. 57.

An act to amend the first, second, third and fourth sections of an act entitled "an act supplementary to an act relating to cities of the first class having a population exceeding eighty thousand inhabitants," passed March 5, 1860, passed March 14, 1864. 61 O. L. 25.

An act supplementary to an act relating to cities of the first class having a population exceeding eighty thousand inhabitants, passed March 5, 1860, passed April 12, 1861. 58 O. L. 86.

An act to authorize the construction of sewers in cities of the second class having over thirteen thousand inhabitants at the last federal census, passed February 9, 1863. 60 O. L. 6.

An act to amend an "act to authorize the construction of sewers in cities of the second class having over thirteen thousand inhabitants at

the last federal census," passed February 9, 1863, passed March 23, 1864. 61 O. L. 48.

An act to extend the provisions of an act passed March 23, 1864, providing for the construction of sewers to all cities of the second class and incorporated villages containing not less than two thousand inhabitants, passed April 12, 1861, [March 9, 1866.] 63 O. L. 36.

An act to extend an act therein named to cities of the first class which have been advanced to the grade of cities of the first class since 1860, and to further regulate the construction of sewers in said cities, passed April 21, 1868. 65 O. L. 104.

An act to amend section one of the act entitled "an act supplementary to an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the amendment passed March 11, 1853, and a supplementary act passed April 8, 1856, and supplementary to the act passed passed April 12, 1858, passed March 11, 1863, passed March 25, 1864. 61 O. L. 64.

An act supplementary to an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, and the amendment passed March 11, 1853, and a supplementary act passed April 8, 1856, and supplementary to the act passed April 12, 1858, passed March 11, 1863. 60 O. L. 14.

An act supplementary "to an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, and the amendment passed March 11, 1853, and a supplementary act passed April 8, 1856, and supplementary to the act passed April 12, 1858, and supplementary to the act passed March 11, 1863, and the act passed March 25, 1864, passed April 11, 1865. 62 O. L. 117.

An act to authorize cities of the first class having a population of over one hundred thousand inhabitants to levy a tax for sewerage purposes, passed April 2, 1866. 63 O. L. 86.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, (S. & C., sec. 26, page 1491) and the amendment passed March 11, 1854, [1853] (S. & C. 1527) and a supplementary act passed April 8, [5] 1856, (S. & C. 1542) and supplementary to the act passed April 12, 1858, (55 v. Stat. 70) and supplementary to the act passed March 11, 1863, (60 v. Stat. 14) and supplementary to the act passed March 25, 1864, (61 v. Stat. 64) and the act passed April 11, 1865, (62 v. Stat. 117; Swan's R. S. 855, 979) passed April 5, 1866. 63 O. L. 144.

An act to authorize certain cities of the first class to issue bonds to complete Eggleston avenue sewer, and to levy a tax to pay the same, passed April 13, 1868. 65 O. L. 86.

An act to amend section one of "an act to authorize certain cities of the first class to issue bonds to complete 'Eggleston avenue sewer,' and to levy a tax to pay the same," passed April 13, 1868, passed May 14, 1868. 65 O. L. 195.

An act to authorize the cities of the first class having a population

of over one hundred thousand inhabitants, to levy a tax for sewerage purposes, passed February 21, 1867. 64 O. L. 19.

An act supplementary to the act entitled "an act to amend an act to authorize the construction of sewers in cities of the second class having over thirteen thousand inhabitants at the last federal census," passed February 9, 1863, passed March 23, 1864, passed April 16, 1867. 64 O. L. 236.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, (S. & C. 1491, sec. 26) and the amendment passed March 11, 1854, [1853] (S. & C. 1527) and a supplementary act passed April 8, [5] 1856, (S. & C. 1542) and supplementary to the act passed April 12, 1858, (55 v. Stat. 70) and supplementary to the act passed March 11, 1863, (60 v. Stat. 14) and supplementary to the act passed March 25, 1864, (61 v. Stat. 64) and the act passed April 11, 1865, (62 v. Stat. 117;) and supplementary to the act passed April 5, 1866, (63 v. Stat. 144; Swan's R. S. 855, 979.) Passed January 26, 1867. 64 O. L. 8.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 11, 1867. 64 O. L. 124.

An act to authorize the council of incorporated villages to levy a tax for sewerage purposes, passed April 13, 1867. 64 O. L. 141.

An act to authorize the councils of incorporated villages of over two thousand inhabitants to locate and construct local sewers, passed April 3, 1867. 64 O. L. 104.

An act to authorize city councils of cities of the second class to borrow money and issue bonds for the enlargement and improvement of water-works, passed March 11, 1867. 64 O. L. 50.

An act supplementary to "an act to authorize city councils of cities of the second class to borrow money and issue bonds for the enlargement and improvement of water-works, passed March 11, 1867," passed February 15, 1868. 65 O. L. 9.

An act to authorize city councils of cities of the first class, having a population of over one hundred thousand inhabitants, to issue bonds for water-works purposes, passed April 3, 1868. 65 O. L. 77.

An act to authorize cities to extend the water-works beyond the city limits, passed April 6, 1865. 62 O. L. 86.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed March 25, 1863. 60 O. L. 44.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1862, passed March 7, [9] 1866. 63 O. L. 30.

An act to authorize the establishment of houses of correction, and the confinement of convicted persons therein, passed April 23, [13] 1867. 64 O. L. 130.

An act supplementary to an act entitled "an act supplementary to the act entitled 'an act to provide for the organization of cities and

incorporated villages,' passed May 3, 1852," passed March 9, 1866, passed April 11, 1868. 65 O. L. 85.

An act to provide for the appointment of cemetery directors, passed March 8, 1865. 62 O. L. 38.

An act to authorize town councils of incorporated villages to appropriate lands for cemetery purposes, passed April 8, 1865. 62 O. L. 101.

An act to amend sections one and two of an act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages, as amended March 7, 1860," passed March 29, 1867. 64 O. L. 70.

An act for the protection of certain graveyards and burial-grounds, passed April 3, 1867. 64 O. L. 102.

An act to enable certain villages to levy a special tax for cemetery purposes, passed April 16, 1867. 64 O. L. 203.

An act to authorize cities of the second class, and the townships in which the same may be situated, to unite in the purchase and improvement of land for cemetery purposes, passed March 20, 1868. 65 O. L. 32.

An act supplementary to an act entitled "an act to provide for the organization of cities and incorporated villages, passed March 11, 1853, and the acts amendatory thereof and supplementary thereto, passed April 3, 1868. 65 O. L. 52.

An act authorizing trustees of cemetery associations to sell and transfer by deed of trust such lands as they hold in trust, to township trustees and the council of incorporated villages, passed May 16, 1868. 65 O. L. 212.

An act to amend section four (4) of an act entitled "an act to enable townships and incorporated villages to establish cemeteries common to both," passed and took effect March 17, 1860, passed May 16, 1868. 65 O. L. 213.

An act to authorize certain cities therein named to borrow money for fire purposes, passed April 8, 1868. 65 O. L. 67.

An act to amend section one of an act passed April 9, 1863, entitled an act supplementary to the "act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed March 25, 1864. 61 O. L. 61.

An act supplementary to the "act to provide for the organization of cities and incorporated villages, passed May 3, 1852," passed April 9, 1863. 60 O. L. 68.

An act supplementary to the act entitled "an act prescribing the rates of taxation for state, county, township, city and other purposes," passed April 30, 1862, passed April 16, 1867. 64 O. L. 230.

An act to amend a certain act therein named in relation to the purchase of steam or other fire engines, by incorporated villages, passed February 25, 1867. 64 O. L. 23.

An act to authorize incorporated villages in this state to borrow money and levy taxes for the purpose of purchasing fire engines and to build engine houses, passed April 11, 1865. 62 O. L. 113.

An act to provide for the erection of a hospital in cities of the first class having a population of over one hundred thousand inhabitants, passed April 6, 1866. 63 O. L. 153.

An act to amend section seven of an act entitled an act to provide for the erection of a hospital in cities of the first class having a population of over one hundred thousand inhabitants, passed April 13, 1867. 64 O. L. 139.

An act supplementary to the "act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 9, 1868. 65 O. L. 83.

An act supplementary to an act entitled "an act to provide for the erection of a hospital in cities of the first class having a population of over one hundred thousand inhabitants," passed April 6, 1866, passed May 5, 1868. 65 O. L. 148.

An act to authorize city councils of cities of the second class having a population of sixteen thousand and upward at the last federal census, to borrow money and issue bonds for the purpose of purchasing ground and erecting a building thereon, for a city hall, and other purposes, passed March 30, 1868. 65 O. L. 39.

An act to amend an act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 12, 1865. 62 O. L. 135.

An act in relation to city parks, and to repeal an act therein named, passed May 8, 1868. 65 O. L. 163.

An act to authorize cities of the second class therein named to impose a tax for bridge purposes, passed April 5, 1866. 63 O. L. 120.

An act to extend the provisions of an act passed April 5, 1866, entitled "an act to authorize cities of the second class therein named to impose a tax for bridge purposes" (63 v. Stat. 120) to cities of the first class raised to that grade between decennial periods, passed April 13, 1867. 64 O. L. 149.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed March 9, 1866. 63 O. L. 36.

An act authorizing cities of the second class to create new wards, and define the boundaries thereof, in certain cases, passed March 21, 1863. 60 O. L. 25.

An act supplementary to an act entitled "an act authorizing cities of the second class to create new wards and define the boundaries thereof in certain cases," passed March 21, 1863, passed March 19, 1868. 65 O. L. 28.

An act supplementary to the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed February 15, 1867. 64 O. L. 14.

An act to re-enact and amend "an act supplementary to the act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed April 14, 1868. 65 O. L. 88.

An act to provide for the organization, as cities of the first class, of such cities as may have been advanced to the grade of cities of the first

class between decennial periods and prior to May, 1867; and also supplementary to the act passed May 3, 1852, entitled "an act to provide for the organization of cities and incorporated villages," and to the several acts supplementary thereto and amendatory thereof, now in force; also further to define the duties of county treasurers, passed March 14, 1867. 64 O. L. 52.

An act to amend section seven of an act entitled "an act to provide for the organization, as cities of the first class, of such cities as may have been advanced to the grades of cities of the first class between decennial periods, and prior to May, 1867; and also supplementary to the act passed May 3, 1852, entitled "an act to provide for the organization of cities and incorporated villages," and to the several acts supplementary thereto and amendatory thereof, now in force; also, further to define the duties of county treasurers, passed April 16, 1868. 65 O. L. 92.

An act supplementary to the "act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed February 3, 1864, May 5, 1868. 65 O. L. 145.

An act supplementary to the "act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed May 5, 1868, February 3, 1864. 61 O. L. 5.

An act supplementary to "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852, passed March 28, 1864. 61 O. L. 72.

An act to amend the first section of the "act to authorize cities of the second class to fund their floating debt," passed February 24, 1868, [1865.] 62 O. L. 31.

An act to authorize cities of the first class, having a population of less than one hundred thousand, to fund their floating indebtedness, passed March 31, 1864. 61 O. L. 134.

An act to authorize cities of the first class, having a population of less than one hundred thousand, to fund their floating indebtedness, passed April 13, 1867. 64 O. L. 148.

An act to enable certain cities to borrow money and levy a tax to pay the same, passed April 11, 1867. 64 O. L. 123.

An act to authorize certain cities of the second class to levy taxes to aid in the erection of court-houses, passed April 12, 1867. 64 O. L. 129.

An act supplementary to the act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed February 28, 1861. 58 O. L. 23.

An act to authorize cities of the first class, exceeding one hundred thousand inhabitants, to purchase fuel and levy a tax therefor, passed February 20, 1864. 61 O. L. 13.

An act to amend an act entitled "an act to authorize cities of the first class, exceeding one hundred thousand inhabitants, to purchase fuel and levy a tax therefor," passed February 20, 1864, passed March 9, 1867. 64 O. L. 41.

An act to restrain city councils of cities of the first class in certain cases, passed April 7, 1865. 62 O. L. 96.

An act to amend an act entitled "an act to authorize certain cities of the first class to issue bonds for the purchase of gas-works, passed April 6, 1866, passed January 26, 1867. 64 O. L. 7.

An act to amend an act entitled "an act to authorize certain cities of the first class to sprinkle the streets," passed April 13, 1865, passed April 6, 1866. 63 O. L. 186.

An act supplementary to an act entitled an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, passed April 16, 1867. 64 O. L. 248.

An act to limit the powers of city councils of cities of the first class having a population of one hundred thousand inhabitants and upward, passed February 1, 1865. 62 O. L. 7.

An act to amend section five of "an act prescribing the rates of taxation for state, county, township, city and other purposes, passed April 30, 1862, as amended February 7, 1866, passed May 14, 1868. 65 O. L. 195.

An act to amend the second and third sections of the act passed April 30, 1862, entitled "an act prescribing the rates of taxation for state, county, township, city and other purposes, passed April 14, 1863. 60 O. L. 93.

Sections one and two of an act entitled "an act to amend an act to provide for and regulate street railroad companies," passed April 10, 1861, and supplementary thereto, passed March 27, 1866. 63 O. L. 55.

An act to amend an act for the better regulation of street railroads, and for other purposes, passed April 17, 1867, passed April 9, 1868. 65 O. L. 83.

An act for the better regulation of street railroads, and for other purposes, passed April 17, 1867. 64 O. L. 250.

An act supplementary to an act to authorize the erection, improving, enlarging or constructing additions to town-halls, and to repeal an act therein named, passed April 2, 1866, passed April 13, 1867. 64 O. L. 143.

An act supplementary to an act passed April 13, 1867, entitled an act supplementary to an act authorizing the erection, improving, enlarging or constructing additions to town-halls, and to repeal an act therein named, passed April 2, 1866, passed May 6, 1868. 65 O. L. 162.

An act to amend section sixty-nine of an act entitled an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, as amended March 25, 1862, as amended April 29, 1862, and to repeal section one of the last named act, passed March 15, 1869. 66 O. L. 25.

An act to authorize cities of the second class to receive donations of library buildings and libraries, and keep up and maintain the same, passed February 24, 1868. 65 O. L. 12.

SEC. 731. [732.] *When this act to take effect.* This act shall take effect and be in force from and after the first day of July, 1869.

F. W. THORNHILL,
Speaker of the House of Representatives.
J. C. LEE,
President of the Senate.

Passed May 7, 1869.

TOWN PLATS—RECORDING, ETC.

An Act to provide for the recording of town plats.

[Passed March 3, and took effect June 1, 1831.—3 Chase, ch. 867.]

SEC. 1. *How towns laid off. Be it enacted, etc.*, That whenever any person wishes to lay out a town within this state, they shall cause the same to be surveyed, and a plat or map thereof made by the county surveyor, if any there be, of the county in which said town is situated; *but if there be no county surveyor in the county, then, and in that case, by the county surveyor of an adjacent county*:[1] which plat or map shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out-lots, or fractional lots, within, adjoining, or adjacent to said town, describing the same by courses, boundaries and extent.

SEC. 2. *Same.* That all the in-lots intended for sale, shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plat or map: and all out-lots which shall not exceed ten acres in size, shall in like manner be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border on the same.

SEC. 3. *Same.* That the proprietor of the town, his, her or their agent, shall, at the time of surveying and laying out a town, plant and fix at a corner of the public ground, or at the corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in-lots in the town, and at the corner of each out-lot, a good and sufficient stone, of such size and dimensions, and in such manner as the surveyor shall direct, for a corner from which to make future surveys; and the point or points where the same may be found, shall be designated on the plat or map.

SEC. 4. *Acknowledgment of plat—its record.* That the plat or map, after having been completed, shall be certified by the surveyor, and acknowledged by the owner or owners of the town, if resident of this state; or if said owner or owners shall not reside in this state, then and in that case, by his, her or their agent, legally authorized so to do, before some officer authorized to acknowledge deeds, and recorded in the recorder's office of the county in which said town is situated.

SEC. 5. *Same.* That if the county in which said town is situated shall not be organized, then, and in that case, the plat or map shall be recorded in the recorder's office of that county to which the county,

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[1] Any other competent surveyor is sufficient. 2 Curwen, ch. 930.

in which said town is situated, shall at the time be attached for judicial purposes.

SEC. 6. *Plats of subdivision in cities or towns—how made, acknowledged and recorded.* That all proprietors of lots or grounds in any city or town corporate in this state, who have subdivided or laid out, or who shall hereafter subdivide or lay out the same in lots for sale, shall cause accurate and true maps or plats thereof to be recorded in the office of the recorder of the county in which such town or city may be situated; which maps or plats, so to be recorded, shall set forth and describe, with certainty, all grounds laid out or granted for streets, alleys, ways, commons, or other public uses; and all the lots sold or intended for sale by progressive numbers, or by the squares in which they are situated, and the precise length and width of each and every lot; and shall be acknowledged before a justice of the peace, or some other officer authorized by law to take and certify acknowledgments of deeds, and shall be certified by the officer taking the same, in the manner prescribed for the proof and acknowledgment of deeds; and such map or plat so recorded, shall be deemed a sufficient conveyance to vest the fee of the parcel or parcels of land therein set forth and described, or intended to be for streets, alleys, ways, commons or other public uses, in such city or town corporate, to be held in the corporate name thereof, in trust to, and for the uses and purposes so set forth and expressed or intended.

SEC. 7 *Penalty for selling lots in subdivision or addition, before plat is recorded.* That if any proprietor or proprietors, or his or their agent or attorney, shall sell any lot or lots, in any plan of subdivision of, or addition to the lots originally laid out in any town or city in this state, before a map or plat of such subdivision or addition shall have been recorded, as herein required, such proprietors, agent or attorney shall forfeit and pay to the state of Ohio, for the use of such town or city, the sum of fifty dollars for each and every lot so sold, to be recovered in an action of debt, before any court having cognizance of the same, together with costs of suit, on the complaint of any citizen.

SEC. 8. *How estate in public grounds, etc., vest by recording plat.* That the plat or map, when recorded, as required by this act, shall be deemed and considered in law, a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, named or intended for public use, in the county in which the town is situated, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever.[1]

SEC. 9. *Penalty for not platting, surveying, or planting corners.*

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[1] Municipal corporations are competent "to acquire, hold and possess property, real and personal;" ante, p. 12, § 8. "To acquire by purchase, or otherwise, and hold real estate, or any interest therein, and other property, for the uses of the corporation, and to sell or lease the same;" ante, p. 58, § 199, cl. 34. But "no street or alley, which has been or may be dedicated to public use by the proprietor of ground in any corporation, shall be deemed a public street or alley, or be under the care or control

That if any person shall lay out any town, or addition to any town or city, and neglect to plant the corner-stones therein, or cause the same to be surveyed and platted, in any other manner than that which is prescribed in this act, every person, so offending, shall forfeit and pay the sum of one hundred dollars, for the use of the county, to be recovered in an action of debt, in the name of the county treasurer.

Sec. 10. *Or selling lots without first recording plat.* That if any person shall dispose of, offer for sale, or lease for any time exceeding five years, any out or in-lot in any town, or addition to any town

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of the council, unless the dedication shall be accepted and confirmed by an ordinance specifically passed for such purpose;" ante, p. 108, § 440.

The opening of a street, by the ordinance of a municipal corporation, is a dedication of the property condemned, to a specific use; *i. e.*, a street or highway; and the owners of such property have an immediate right of action therefor against the city. *Strader* v. *Cincinnati*, 1 Handy, 446.

1. A dedication of land to public uses may be effected by grant, by estoppel, or by following the statutory form of dedication. *Fulton* v. *Mehrenfield*, Disney's R. 151.

2. Dedications at common law, *in pais*, operate by way of estoppel, and not as grants. *Ib.*

3. The act of 1805, providing for the recording of town plats, contemplated the entire plat of a town, and did not apply to smaller subdivisions. *Ib.*

4. The recording of a plat, under the act of 1831, in relation to subdivisions, would convey to the public no interest in the streets of a subdivision, in case the proprietor had failed or neglected to have the plat acknowledged: but such act of subdivision and record would, with other acts of the proprietor, go to prove a dedication at common law. *Ib.*

5. There can be no dedication to the public without an acceptance by the public, and this may be shown by the occupation and use and other acts on the part of the public. *Ib.*

Storer, J.: "The legal title in the property sought to be recovered, never vested in the plaintiff by virtue of the recorded plat. It is claimed, however, that the subsequent acts of Davies, and those who claim under him, may be referred to in aid of the dedication, and thus remove all doubts as to the donor's intention. We admit the propriety of such testimony, and could give it full effect, were the plaintiff now in possession, claiming the property in trust for the public use, and the original proprietor or his grantees suing for the land. In such a case there need be no technical title, as the question would be merely upon the right to occupy under the license. The public enjoyment of the easement need not be supported by deed, if once begun, and acquiesced in by the owners of the fee; for there can be no distinction between a legal and an equitable claim to the possession of the public, provided the use is consistent with the purposes of the dedication." * * * * * * * *

"The plaintiff does not pretend that she ever assented to the dedication, or been in the enjoyment of the easement. If they had proved an occupation, with the consent of Davies, and their right had been disturbed, they would have their remedy; but the proposition, in the imperfectly executed plat, to dedicate, never having been accepted by those who represented the public, could not confer a right until the agreement was executed by some unequivocal act on the part of the donees.

"We suppose there is no obligation upon a municipal corporation to accept the grant of a street, on the offer of any proprietor to set apart a portion of his estate for that purpose. She may withhold her assent, and no title will pass. Such a power should always be reserved to the public authorities, else the highways of a city or town, instead of being regu-

or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this act shall have been complied with, every person so offending, shall forfeit and pay, for the use of the county, the sum of twenty-five dollars, for each and every lot or part of lot so sold, disposed of, leased or offered for sale, for the use of the

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larly laid out and symmetrically numbered, may be as irregular in their form, width and adaptation to the public benefit, as the caprice or humor of the individual may dictate." *Ib.*

See also *Doren* v. *Horton*, Disney's R. 401.

The effect of the dedication is to transfer the fee to the public, and the dedication may be proved by parol; and while the donor can not reclaim the land, he may enforce the purposes for which the dedication was made. *Gest* v. *Kenner*, 2 Handy, 86.

The acknowledgment and recording of a town plat, is the act of dedication of the public ground to public uses. *Brown* v. *Manning et al.*, 6 O. 298. An act of dedication, by the record of a town plat, of lots designated thereon, thus: "Public ground," is presumed, in the absence of explanatory evidence, to be for a public square for the use of the town. A subsequent conveyance by the donors, affect neither the trust, nor the title. *Lebanon* v. *Warren Co.*, 9 O. 80.

When lands are dedicated by the owner to any lawful use, public, pious, or charitable, and are used for the object and in the manner contemplated by the owner, it inures, it is said, as a grant. That the existence of a grantee is not essential to the validity of such dedication; nor is any particular form of words necessary to give it effect. If accepted, and used by the public in the manner intended, it works an *estoppel in pais*, precluding the donor, and all claiming in his right, from asserting any ownership inconsistent with such use. *Brown* v. *Manning*, 6 O. 298.

When the words of dedication are ambiguous, the cotemporaneous acts and declarations of the donors, and usage, may be adverted to, to explain them. *Lebanon* v. *Warren Co.*, 9 O. 80.

A town plat was made out and acknowledged by a person who professed to act as the agent of the owners of the land. The proprietors, in their deeds, adopted the numbers designated for the lots, and referred to the recorded town plat, and the town was occupied, in conformity to the plat, for twenty-five years. A piece of ground on the plat was marked "P. Square," and some of the deeds of the proprietors described lots as lying next to the public square. It was held, that the acts of the proprietors were sufficient proof of the authority of the agent. That the dedication of the public square was specific, and could not be affected by parol proof of an intention on the part of the proprietors, in relation thereto, different from the recorded dedication. That an individual owner of a lot, adjacent to the public square, might proceed in chancery to enjoin the original proprietors from making private appropriations of such public square, he having an individual interest therein. *Brown* v. *Manning*, 6 O. 298; *Le Clercq* v. *Gallipolis*, 7 O. 1 pt. 217.

If, however, a square is conveyed to a county for the use of public buildings and a court-house, the owners of lots adjoining thereto have no individual interest therein, and are not, therefore, the proper persons to prevent the commissioners of the county from leasing to individuals portions of the ground, reserving rent to the county. The lot-owners in such case act as volunteers in their interference with the commissioners, even though the latter are proceeding without authority. *Smith* v. *Heuston*, 6 O. 101. See *Brown* v. *Manning*, 6 O. 298, where this case is commented upon.

Where land in a town has been dedicated as a public square, and used as such, the legislature can not authorize the town corporation to change its character. *Le Clercq* v. *Gallipolis*, 7 O. 1 pt. 217.

county, to be recovered in an action of debt, in the name of the treasurer of the county.

SEC. 11. *Directors of towns governed by preceding provisions.* That the directors appointed by the court of common pleas, to lay out a town where a seat of justice has been located on lands on which

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A special verdict found that a dedication of grounds for public uses was made by the proprietors of a town, before a county was established, and that the county, when organized, came into the possession of the dedicated grounds, and occupied them for a court-house and jail, with the consent of the people of the town, and further, "that in so occupying said property, it was strictly in accordance with the object had in view by the original donors." It was held, that the verdict found the right in the county. *Cincinnati* v. *Hamilton Co.*, 7 O. 1 pt. 68.

Where land was dedicated simply as "public ground," it was held, that the actual occupation of it by a court-house and jail was not inconsistent with the *use* of the property in the town; its occupation transferred no property, but was an easement only; and that the town might reclaim its rights, when the county occupation ceased. *Lebanon* v. *Warren Co.*, 9 O. 80; 18 O. 18–25.

It seems that, in some cases, a contract impliedly prohibited by the imposition of a statutory penalty, may, notwithstanding, be enforced in a court of justice. A contract, therefore, for the sale of a lot is valid, and will be enforced, although the town has not been surveyed, platted, or recorded. *Strong* v. *Darling*, 9 O. 201.

The trustees of the Ohio University, under authority of an act of the legislature, laid off the town of Athens on the lands donated by congress for the purpose of endowing a university, and recorded the plat. This plat contains certain streets, squares, etc., pertinently designated, and also certain vacant or unsurveyed land, without the limits of the town proper, bearing this designation: "All the lands within the aforesaid boundary lines, not included in the public squares, house lots, out lots, streets and roads, are designated for commons; provided, always, that the board of trustees reserve the right of laying out such parts thereof as they may from time to time think proper, into house lots, out lots," etc. *Held*, that the reservation was legal, and that the trustees had power to lay out into lots the portion of the land designated as commons, and dispose of the same for the benefit of the university. *Crippen* v. *Ohio University*, 12 O. 96.

A tract of land designated in the plat of a town laid out in 1796, as the "public square," was thereby dedicated to the use of the town, and no subsequent disposition made of it by the original proprietor can affect such use. *Huber* v. *Gazley*, 18 O. 18; 3 O. S. 399.

A person in possession of such land, deriving title under the original proprietor, has no lien upon the land for the consideration money, or improvements. *Ib.*

Where the width of a street marked by right lines, is given in a town plat, surplus land between the street and the low-water mark of a river, is not thereby dedicated to the use of the town. *McLaughlin* v. *Stevens*, 18 O. 94.

It is no evidence of an intention to dedicate land to the use of the public, that the original proprietor joins in a petition for a town charter, extending the limits of the corporation over such land. *Ib.*

A dedication, by the original proprietors of a town, of a parcel of ground therein, for public uses, is valid, although they held but an equitable estate in the premises; and their trustee, holding but a naked legal title for their use, is bound to respect such dedication. *Williams* v. *Presbyterian Society*, 1 O. S. 478.

Such dedication, made before any legislative act required town plats to be recorded, is valid without such record. *Ib.*

no town is situated, shall be governed in all respects, and be liable to all the penalties of this act.

SEC. 12. *Act repealed.* That the "act providing for the recording of town plats," passed February 14, 1805, be and the same is hereby

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And it is valid, although there was no grantee *in esse* when it was made, capable of taking the fee. *Ib.*

Property dedicated to public uses, without any provision for a forfeiture, does not revert to the dedicators upon a misuser of it. It is only when the uses become impossible of execution, that it can revert. The right of a county or town to property thus dedicated, may be barred by the statute of limitations, or lost by lapse of time. *Ib.*

So may a right of the dedicators to enforce a specific execution of the purposes of the dedication. *Ib.*

Such dedicators have not, by mere operation of law, exclusive of any provision in the act of dedication, a visitorial power. *Ib.*

Under the territorial law of December 6, 1800 (1 Chase, 291), a stranger was not authorized to make a town plat and cause it to be recorded, unless the original proprietors were dead, or had removed from the territory. *Ib.*

Although the manner of the dedication, and the principles and rules of property applicable to public highways and public squares or commons, in cities and villages, may rest upon the same ground, yet the use and purpose of each is different and clearly distinguished from the other. *Langley* v. *Gallipolis*, 2 O. S. 107.

The easement of a public highway comprehends the rights of all individuals in the community, whether upon foot, on horse back, or with any kind of vehicle, to pass and to repass, together with the right of the public to do all the acts necessary to improve it and keep it in repair. But the use or beneficial purpose of a public common or square, in a city or village, where no special limitation or use is prescribed by the dedication, is such that it may be improved and ornamented for recreation and health, or for the public buildings, or as a place for the transaction of public business of the people of the city or village; or both for the purposes of pleasure and business, at the discretion of the municipal authorities. *Ib.*

The dedication of "*La Place*," in the village of Gallipolis, subject to the single restriction that it should not be obstructed on the bank of the Ohio river by any kind of public buildings, was for the usual and ordinary purposes of a public square, and, as such, subject to the control of the public authorities of the people of the village. *Ib.*

The long-continued use of this ground as an uninclosed public common, could lay no foundation for any presumption against the right of the village to improve the ground, and use it in any other manner deemed more advantageous and beneficial to the public, within the terms of the dedication. *Ib.*

The provision in the act incorporating the town, which, among other things, confers the power "to regulate, improve, and keep open, unobstructed and in repair, the landings, commons, streets, etc., within the corporation," has reference to the appropriate use and object to which each was dedicated, requiring each to remain open and unobstructed, so far as necessary to accomplish the appropriate object for which it was designed, and no further. *Ib.*

No statute has authorized the recording of town plats not executed and acknowledged pursuant to statute, and, consequently, such record is not, *per se*, evidence. Nor is it made evidence by proof, that, in building or improving, some lot-owners paid respect to the plat, and others not. *Satchell* v. *Doran*, 4 O. S. 542.

A dedication of ground for public uses may be made in Ohio, either under the statute or according to the rules of the common law. *Fulton* v. *Mehrenfeld*, 8 O. S. 440, affirming S. C., 2 Handy 176.

When a valid dedication of a street has been made in either form an

repealed : provided, that all penalties incurred under said act, may be sued for and recovered, and shall be appropriated as provided in said act, in the same manner as if said act had not been repealed. (1 Chase, ch. 91.)

This act to take effect from and after the first day of June next.

TOWN PLATS—VACATING, ETC.

An act to provide for the vacating of town plats, and for other purposes.

[Passed and took effect January 29, 1828—3 Chase, ch. 744.]

SEC. 1. *Alteration, etc., on whose application. Be it enacted, etc.*, That the courts of common pleas are hereby authorized and empowered, on application for that purpose, made by the proprietor or proprietors, his, her or their heirs, assignee or assignees of any

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action may be maintained by the proper municipal corporation to recover the possession from any one who wrongfully withholds it. *Ib.*

The statutory dedication, under the laws in force in 1830, operated to transfer the estate by way of grant, requiring no assent on the part of the public, and to be effective as a dedication, the solemnities required by the statute, as to acknowledgment and recording, must be complied with. *Ib.*

A defective dedication under the statute is evidence, as an act *in pais*, of a dedication at common law by the owner. *Ib.*

Dedications of land to public uses at common law in general, operate by way of *estoppel*, and not as *grants* or *transfers* of an interest. *Ib.*

To constitute a valid dedication of a street or highway at common law, there must be not only a *dedication* to public uses by the owner, but also an *acceptance* of such dedication by the public, and these may be shown by the acts and declarations of the parties and the surrounding circumstances.

The incorporated village of Van Wert was laid out in 1835, and the proprietors, by plat duly acknowledged and recorded, dedicated two specified lots therein, "for school purposes, and on which to erect school-houses." By reason of the subsequent construction and continued operation of a railroad, and the location of a depot in connection therewith, in close proximity to these lots, they were rendered unsuitable to be used as sites for school-houses, and their use for that purpose became dangerous. A petition was filed by the Board of Education of the incorporated village, praying, for the reason aforesaid, that the Court of Common Pleas might order the lots to be sold, and the proceeds of the sale to be applied to the purpose of suitable school-house sites, or to the erection of school-houses on suitable grounds to be procured by the board. Upon demurrer to the petition, *Held*, that the dedication was for the specific use, and conferred no power of alienation so as to extinguish the use; that if the use created by the dedication was abandoned, or should become impossible of execution, the premises would revert to the dedicators or their representatives, and that, without their consent, they could not be divested of their contingent right of reversion by an absolute alienation. The principle upon which a trust may, under certain circumstances, be executed *cy pres*, is not applicable to such a use. Demurrer sustained and petition dismissed. *Board of Ed. of Van Wert* v. *Van Wert*, 18 O. S. —.

town, or of any addition of said town, situated within their proper county, to alter or vacate said town or its addition, or any part of either of them.

SEC. 2. *Notice thereof.* That if the proprietor or proprietors of said town, or of the addition thereof, his, her or their heirs, assignee or assignees, shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors, his, her or their heirs, assignee or assignees, shall give notice in writing of such intended application, in at least two places in the county wherein such town may be situated, one to be set up in the most public place in said town, and one on the court-house door of said county; and shall also insert a copy of said notice in some newspaper printed in said county; and if no newspaper is printed in said county, then in some one having the most general circulation therein, at least sixty days prior to the sitting of said court, to which he, she or they, intend to make such application; and which notices shall set forth and describe the part or parts intended to be vacated or altered, and the right by which the party, making such application, claims.[1]

SEC. 3. *Evidence on the hearing—order and its record.* That if such applicant shall produce to said court, satisfactory evidence that the notice, required by the preceding section, has been given, and that all persons owning any lot, or part thereof, in said town, or the addition to said town, as the case may be, their authorized agent or attorney, have agreed that the whole or a part of said town, or its addition, shall be altered or vacated, the court shall, in their discretion, proceed to alter or vacate said town, or its addition, or any part of either; and the proceedings, under this act, shall be recorded by the clerk, with the records of said court, a copy whereof shall be made out and certified under the seal of said court, by the clerk thereof, and be, by the party applying for such vacation or alteration of said town, or its addition, within thirty days from the rising of said court, deposited with the recorder of deeds for said county, who shall record the same: provided, that the vacating of any town plat, or its addition, or any part thereof, shall not vacate any part of a state or county road.

SEC. 4. *Defendants to the proceeding, and costs.* That at the term to which the notice shall be given, as is provided for in the second section of this act, or at any subsequent term, during the pendency of said application, any person feeling interested in said proceedings, may, upon motion for that purpose, be made party defendant to said application; and in which case, upon final hearing, the party succeeding shall have judgment against the other, for the costs of said proceedings, and, for which, execution may issue as in other cases.

SEC. 5. *Fees of clerk.* That the clerk of the court shall be entitled to the sum of fifty cents for the recording of any plat required to be recorded under the provisions of this act; and for such other services, the same fees as are allowed for similar services by the act entitled "an act to regulate the fees of civil officers in civil and criminal cases," passed February 19, 1824.

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[1] 1 Curwen, ch. 249.

SEC. 6. *Public common may be changed into streets, etc.* That on application made, and notice given according to the provisions of this act, the court of common pleas shall have power to change any commons that may be included in any town plat within their proper county, into streets, and to cause such change to be recorded, as is provided by the third section of this act.

SEC. 7. *Act repealed.* That the act entitled "an act for the vacating of town plats, and for other purposes," passed December twenty-first, eighteen hundred and eleven, be and the same is hereby repealed. (2 Chase, ch. 261).

TOWNS—ESTABLISHING AND VACATING STREETS.

An act to amend the act to provide for the vacation of town plats, and for other purposes, passed January 29, 1828.

[Passed and took effect March 5, 1839.—1 Curwen, ch. 249.]

SEC. 1. *Who may apply for establishment or vacation of street or alley. Be it enacted, etc.*, That on petition filed in the court of common pleas of any county in this state, by any person or persons owning any lot or lots in any town or city, in the said county, praying that any alley or alleys, street or streets, in the immediate vicinity of such lot or lots, may be established or vacated, the said court may, and they are hereby authorized, upon hearing, and being satisfied that it will conduce to the general interests of such town or city, to declare such alley or alleys, street or streets, established or vacated.

SEC. 2. *Proceedings in such case.* That in all cases where application shall be made in the manner and for the purpose aforesaid, such petition shall be filed in the office of the clerk of said court, at least forty days previous to the next term of the said court, and the petitioners shall also give notice in some newspaper printed in said county, in general circulation therein, of the filing of such petition, and the substance and prayer thereof; and if the court shall be of opinion that any person or persons owning any lot or lots in the immediate vicinity of such alley or alleys, street or streets, prayed to be vacated or established, not assenting to, or petitioning therefor, will sustain damage thereby, they may proceed to hear proof in reference thereto, and may render judgment against the petitioners for such damages as they may think just, and the same shall be assessed by the court against the petitioners, ratably, according to the value of the property owned by the petitioners, as the same stands taxed on the tax duplicate of said county; and, when necessary, the court shall appoint a guardian or guardians ad litem, for all minors or persons of non-sane mind, who may be interested in the premises.

SEC. 3. *Same.* That such alley or alleys, street or streets, as shall be declared vacated, under the provisions of this act, shall not be closed or obstructed until the damages assessed or adjudged under

the second section shall have been fully paid to the persons entitled to the same.

TOWN PLAT—VACATING, ETC.[1]

An act to amend the act to provide for the vacating of town plats, and for other purposes.

[Passed and took effect February 19, 1840.—1 Curwen, ch. 300.]

SEC. 1. *Power of court to alter or vacate. Be it enacted, etc.*, That the courts of common pleas shall have power to alter or vacate any town plat, addition, or parts thereof, within their proper county, as hereinafter provided.

SEC. 2. *Mode of proceeding for that purpose.* That on application of two-thirds of the proprietors of said town plat, or addition, or part of said town plat or addition, proposed to be vacated or altered, in writing, as hereinafter required, the court may alter or vacate said town plat, addition, or parts thereof; and if the court shall be of opinion that any person or persons owning any lot or lots in said town plat, addition, or parts thereof, proposed to be vacated or altered, not assenting thereto, will sustain damage thereby, they may proceed to hear proof in reference thereto, and may render judgment against the petitioners for such damages as they may think proper and just, and the same shall be assessed by the court, against the petitioners ratably, according to the value of the property owned by the petitioners, as the same stands taxed on the duplicate of said county; and when necessary, the court shall appoint a guardian or guardians ad litem, for all minors or persons of insane mind, who may be interested in the premises.

SEC. 3. *Same.* That on the payment of the damages, thus assessed in the second section of this act, such town plat, addition, or parts thereof shall be considered vacated, or altered, as the case may be.

SEC. 4. *Same.* That all applications, for vacating or altering any town plat, addition, or parts thereof, mentioned, shall be in writing, in which the petitioners shall set forth, specifically, the plat, addition, or parts to be vacated or altered; which application shall be filed with the clerk of the court of common pleas within said county, forty days before the sitting of said court to which said application is intended to be made; and shall give thirty days' notice thereof, in writing; one of which notices shall be put up in some public place, in the township where such town plat, addition, or parts thereof may be situated, [and] one on the court-house door of the county; and thirty days' notice in some newspaper printed in said county, and of general circulation in said county, and if no newspaper is printed in said county, then in some one having the most general circulation in said county; which notices shall set forth briefly, the part or parts of said town plat, addition, or parts thereof, to be vacated.

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[1] See ante, p. 122, §§ 491–493.

SEC. 5. *Repealing clause.* That so much of the act passed January 29, 1828, entitled "an act to provide for the vacating of town plats, and for other purposes," as is inconsistent with the provisions of this act, be and the same is hereby repealed.

TOWN LOTS—NUMBERING, ETC.

An act authorizing the numbering of lots in any city, town or borough in this state to be revised.

[Passed February 2, took effect April 1, 1848.—2 Curwen, ch. 812.]

SEC. 1. *Who shall revise and renumber lots. Be it enacted, etc.,* That where the lots of any city, town or borough in this state are not numbered consecutively upon the original plat thereof, and the plats of addition or subdivision thereto, it shall be lawful for the auditor and recorder of the county in which such city, town or borough may be situate, in conjunction with some person to be appointed by the corporate authority of such city, town or borough, to make a revision of the numbers of all the in-lots and out-lots of such city, town or borough, as the same stand upon record; and to number anew all the said lots, so that the in-lots of such city, town or borough shall have but one single consecutive series of numbers, beginning with number one; and the out-lots shall have but one similar series of numbers, also beginning with number one.

SEC. 2. *Mode of renumbering, etc.* That the said auditor and recorder, with their associate, to be appointed as aforesaid, shall make a schedule of all the in-lots of any such city, town or borough, beginning with the original plat thereof, setting down the lots in the same, in the order of their numbers, and placing opposite thereto the new numbers, which shall be appropriated to the respective lots, following in the same manner with the plats of addition and subdivision, according to their priority in dates of record, so that the first column shall contain the old numbers of said in-lots in their consecutive order, and the second column shall exhibit opposite to the said numbers, respectively, the new numbers appropriated to each of said lots. And, in the same manner, they shall make a schedule of the out-lots of any such city, town or borough. Such schedule shall accurately and distinctly indicate the plat in which such in-lot or out-lot originally stands upon record; and it shall be the duty of the auditor and recorder to place said schedules on record in their respective offices.

SEC. 3. *Shall be assessed and legally known by their new numbers.* That whenever the revision and renumbering of the lots in any such city, town or borough shall have been made, and the schedule thereof recorded, as provided for in the preceding section, the said lots shall be assessed and entered upon the duplicate for taxation, according to their new numbers; and in all the operations of the assessment and collection of taxes, they shall be lawfully known and designated

by the new numbers given to them under the authority of this act; and all conveyances of the same may be made by the said new numbers, and shall be sufficient to pass the same, in the same manner that such lots might be conveyed when described by their old numbers.

SEC. 4. *How expenses of renumbering paid.* When such revision and renumbering shall be done at the request of the corporate authority of any such city, town or borough, the expenses thereof shall be paid by such city, town or borough. The county commissioners, however, of any county in which any unincorporated town or borough may be situate, shall have authority to direct the auditor and recorder to make such revision and renumbering of such unincorporated town or borough, and cause the expenses thereof to be paid out of the county treasury. They may also direct the auditor and recorder to make such revision and renumbering of an incorporated town or borough, at the expense of the county, where the same shall be neglected by the corporate authority of any such town or borough, should the commissioners be of opinion that such revision and renumbering are necessary for convenience and efficiency in taxation.

SEC. 5. *How additions or subdivisions are to be numbered after such revision.* That after the revision aforesaid shall have been made and recorded, as hereinbefore provided, every person who shall lay off lots as an addition to any such city, town or borough, or who shall make a subdivision to [of] any lots therein, shall number the lots so divided upon his plat in regular consecutive numbers, commencing with the next number after the highest number of in-lots or out-lots, as the case may be, and shall be on record as forming a part of any such city, town or borough, the number of the lots in which have been so revised as aforesaid, unless he shall find, upon careful examination thereof, that the numbers of the lots thereon are in regular continuation from the last number of lots already on record.

SEC. 6. *Compensation.* The auditor, recorder, and their associate, shall each receive the sum of two dollars per day for their services under this act.

SEC. 7. *When act took effect.* That this [act] shall take effect and be in force on and after the first day of April next.

TOWN-HALLS.[1]

SEC. 1. *Be it enacted, etc.,* That the legal voters of any township, incorporated village, or city of the second class in this state, having a population not exceeding sixteen thousand inhabitants, may assemble on the first Monday of April in any year, at the usual place of holding elections in said township, incorporated village or city of the second class, as aforesaid, and then and there decide, by ballot, for or against levying a tax on all the property subject to taxation in such township or incorporated village, or city of the second class, as afore-

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[1] See ante, p. 96.

said, for the purpose of erecting a town-hall, or for the purpose of improving, enlarging, or constructing additions to a town-hall already erected; provided, ten days' previous notice shall be given by the township clerk, on the order of the township trustees, (or the written request of not less than ten legal voters of the township,) by posting up printed or written notices in three of the most public places in said township; and in incorporated villages and cities of the second class, said notices shall be given by the town or city council by publication in some newspaper of general circulation therein.[1]

SEC. 2. That every voter who is in favor of levying a tax on all the property of the township, as aforesaid, for the erection of such hall, or for improving, enlarging or constructing additions to town-halls already erected, as the case may be, shall indorse on his ballot "town-hall," "improvement town-hall," "enlargement town-hall," or "addition town-hall," as the case may be; and if a majority of all the ballots cast at said election are indorsed as aforesaid, then the trustees of such township shall, on or before the first day of June thereafter, inform the auditor of the proper county of the vote of the electors in such township, as expressed at said election; and the county auditor shall levy a tax on all the property of such township standing on the grand list, for the purpose aforesaid; and the said trustees of any township shall have power to purchase grounds, or to receive by devise or deed of gift for the conveyance of real estate, for said purpose; and it shall be lawful for the trustees of any township in which a town-hall shall have been erected at any time, to levy a tax upon all the property of said township subject to taxation, for the purpose of painting, repairing, or discharging any existing debt incurred in the erection or purchase of such hall, or in the improving, enlarging, or constructing additions to such hall, provided the amount of taxes under the provisions of this act shall in no case exceed four mills on the dollar in any one year, on the taxable property of any township; provided, further, that the trustees of any township, or their successors in office, shall not levy a tax for the erection of any town-hall, nor for the painting, repairing or enlarging of any town-hall already erected, for a period not longer than seven years; and the tax so levied shall be collected by the county treasurer, in the same manner and at the same time that state and county taxes are collected, and by him paid, on the order of the county auditor, to the trustees of such township raising the same. Act of 1869, § 2; 66 O. L. 339.

SEC. 3. That said hall and the grounds upon which it is erected or purchased for the erection of a town-hall, shall be under the control of the trustees of the township, and the trustees of such township shall have power to sell and convey any lot or grounds which may have been purchased by such trustees for said town-hall, at any time previous to the erection of such town hall on said lot or grounds, whenever a majority of the qualified electors at any general election of such township shall vote in favor of selling the same and pur-

[1] Act of 1866, §1; 63 O. L. 84.

chasing grounds elsewhere: provided, that ten days' previous notice shall be given by the township clerk on the order of the township trustees or the written request of not less than ten legal voters of the township, by posting up printed or written notices in three of the most public places in said township; and all money arising from such sale shall be applied to the purchase of such other site as may be selected by the trustees of said township; provided further, that all townships, as aforesaid, that have heretofore voted for a town-hall under the provisions of the act heretofore repealed, and which have not yet levied the tax to build the same, are hereby authorized to levy said tax under the provisions of this act. Act of 1869, § 3; 66 O. L. 340.

SEC. 4. That the act entitled "an act to amend the act entitled an act to authorize the erection of town-halls, passed February 24, 1848, and to repeal an act amendatory thereof, passed April 3, 1861," passed March 25, 1864, be and the same is hereby repealed. Act of 1866, § 4; 63 O. L. 85.

SEC. 5. This act shall take effect from and after its passage. Act of 1866, § 5; 63 O. L. 86.

SEC. 6. That the legal voters of any incorporated village or city of the second class, having a population not exceeding sixteen thousand inhabitants, and the legal voters of the township in which said incorporated village is situated, be and are hereby authorized to erect on the public square of said incorporated village, or in the absence of such public square, upon such property as the town council of said incorporated village and township trustees may purchase, a town and township hall, upon such terms and conditions as the town council of said village and the trustees of said township may agree upon under the act to which this is supplementary. Act of 1867, § 1; 64 O. L. 140.

SEC. 7. This act shall take effect from and after its passage. Act of 1867, § 2; 64 O. L. 141.

POOR.

An act to provide temporary relief for the poor in cities of the second class, and in incorporated villages of not less than three thousand inhabitants.

[Passed May 4, 1869; 66 O. L. 86.]

SEC. 1. *Additional levy for poor purposes. Be it enacted, etc.,* That the city council of cities of the second class and the town councils of incorporated villages having a population of not less than three thousand, are hereby authorized to submit the question to the qualified electors to levy a tax in addition to the other taxes now authorized by law, of not more than three-fourths of a mill on the dollar; the proceeds of which shall be exclusively applied to the relief of the poor within such city or incorporated village, to be distributed under the direction of a committee composed of one from each ward, or a committee of three in each incorporated village, appointed annually by the council, who will serve without compensation.

SEC. 2. This act shall take effect on its passage.

RAILROADS.

An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants.

[Passed May 4, 1869; 66 O. L. 80.]

SEC. 1. *Proceedings to establish and maintain a railroad. Be it enacted, etc.*, That whenever, in any city of the first class having a population exceeding one hundred and fifty thousand inhabitants, the city council thereof shall, by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city that a line of railway, to be named in said resolution, should be provided between termini designated therein, one of which shall be such city, it shall be lawful for a board of trustees, appointed as herein provided, and they are hereby authorized to borrow as a fund for that purpose, not to exceed the sum of ten millions of dollars, and to issue bonds therefor in the name of said city, under the corporate seal thereof, bearing interest at a rate not to exceed seven and three-tenths per centum per annum, payable at such times and places, and in such sums, as shall be deemed best by said board. Said bonds shall be signed by the president of said board, and attested by the city auditor, who shall keep a register of the same, and shall be secured by a mortgage on the line of railway and its net income, and by the pledge of the faith of the city, and a tax, which it shall be the duty of the council thereof annually to levy, sufficient, with said net income, to pay the interest and provide a sinking fund for the final redemption of said bonds; provided, that no money shall be borrowed on bonds issued until after the question of providing the line of railway specified in the resolution shall be submitted to a vote of the qualified electors of said city, at a specified election to be ordered by the city council thereof, of which not less than twenty days' notice shall be given in the daily papers of the city; and further provided, that a majority of said electors, voting at such election, shall decide in favor of said line of railway. The returns of said election shall be made to the city clerk, and be by him laid before the city council, who shall declare the result by a resolution. The bonds issued under the authority of this section shall not be sold or disposed of for less than their par value.

SEC. 2. *Duty of city solicitor—of the judges.* If a majority of the votes cast at said election shall be in favor of providing the line of railway as specified in the first section, it shall be the duty of the solicitor forthwith to file a petition in the superior court of said city, or, if there be no superior court, then in the court of common pleas of the county in which said city is situate, praying that the judges thereof will appoint five trustees, to be called the trustees of ———— railway (the blank to be filled with the name given to the railway in the resolution); and it shall be the duty of said judges to make the appointment, and to enter the same on the minutes of the court. They shall enter into bond to the city in such sum as the court may direct, with one or more sufficient sureties, to be appointed [approved] by the court,

conditioned for the faithful discharge of their duties. The bond so taken shall be deposited with the treasurer of the corporation for safe keeping.

SEC. 3. *Duty of the trustees.* The said trustees and their successors shall be the trustees of the said fund, and shall have the control and disbursement of the same. They shall expend said fund in procuring the right to construct, and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph between the termini specified in the said resolution; and for the purposes aforesaid shall have power and capacity to make contracts, appoint, employ and pay officers and agents, and to acquire, hold and possess all the necessary real and personal property and franchises, either in this state or in any other state into which said line of railway may extend. They shall also have power to receive donations of land, money, bonds and other personal property, and to dispose of the same in aid of said fund.

SEC. 4. *President of the board, duties, etc.* The said trustees shall form a board, and shall choose one of their number president, who shall also be the acting trustee, with such power as the board may by resolution from time to time confer upon him. A majority of said trustees shall constitute a quorum, and shall hold regular meetings for the transaction of business, at their office in the city under whose action they are appointed, but they may adjourn from time to time to meet at any time and place they may think proper. They shall keep a record of their proceedings, and they shall cause to be kept a full and accurate account of their receipts and disbursements, and make a report of the same to the city auditor annually, and whenever requested by a resolution of the city council. No money shall be drawn from said fund but upon the order of said board, except their own compensation, which shall be paid out of the same upon the allowance of the court appointing them, and shall be proportioned according to their respective services.

SEC. 5. *Security of officers.* Said trustees shall have power to take such security from any officer, agent or contractor, chosen, appointed or employed by them, as they shall deem advisable. They shall not become surety for any such officer, agent or contractor, or be interested directly or indirectly in any contract concerning said railway. They shall be responsible only for their own acts.

SEC. 6. *Removal for cause.* Whenever the city solicitor of any city under whose action a board of trustees has been appointed as herein provided, shall have reason to believe that any one of said trustees has failed in the faithful performance of his trust, it shall be his duty to apply to the court that appointed said trustee, by petition, praying that such trustee be removed, and another appointed in his place; and when a vacancy shall occur in said board from any other cause, it shall be filled in like manner. If the said city solicitor shall fail to make application in either of the foregoing cases, after request of any holder of the bonds issued by said trustees or by a tax-payer of the corporation, such bondholder or tax-payer may file a petition in his own name on behalf of the holders of such bonds for like relief,

in any court having jurisdiction, and if the court hearing the action shall adjudge in favor of the plaintiff, he shall be allowed as part of his costs, a reasonable compensation to his attorney.

SEC. 7. *Appropriation of land for abutments, etc.* Whenever in the construction of a line of railway as herein provided, it shall be necessary to appropriate land for the foundation of the abutments or piers of any bridge across any stream within or bordering upon this state, or for any other purpose, or to appropriate any rights or franchises, proceedings shall be commenced and conducted in accordance with the act entitled "an act to provide for compensation to the owners of private property appropriated to the use of corporations," passed April 3, 1852, and the acts supplementary thereto, except that the oath and verdict of the jury and the judgment of the court shall be so varied as to suit the case.

SEC. 8. *Purchase of right of way, etc.* Whenever there shall be between the termini designated in any resolution passed under this act, a railroad already partially constructed, or rights of way acquired therefor, which can be adopted as part of the line provided for in said resolution, the trustees of said line may purchase the said railroad and right of way, and pay for the same out of the trust fund.

SEC. 9. *Portions may be rented or leased.* The said trustees shall have power, as fast as portions of the line for which they are trustees are completed, to rent or lease the right to use and operate such portions upon such terms as they may deem best; but such rights shall cease and determine on the final completion of the whole line, when the right to use and operate the same shall be leased by them to such person or company as will conform to the terms and conditions which shall be fixed and provided by the council of the city by which the line of railroad is owned.

SEC, 10. *How expenses of election paid.* The city council of any city passing a resolution as provided in the first section, may appropriate and pay to the said trustees, out of the general fund of said city, such sum as may be necessary for defraying the expenses of the election, and said sum shall be repaid out of said trust fund when raised.

SEC. 11. This act shall take effect on its passage.

AN ACT

To authorize cities of the first class to build railroads and to lease or operate the same.

[Passed May 4, 1869; 66 O. L. 83.]

SEC. 1. *Proceedings to establish and maintain a railroad. Be it enacted, etc.*, That in cities of the first class, which have been advanced to that grade between decennial periods, the city council thereof shall, by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city that a line

of railroad, to be named in said resolution, should be provided between termini designated therein, one of which shall be such city, it shall be lawful for a board of trustees, appointed as herein provided, and they are hereby authorized, to borrow, as a fund for that purpose, not to exceed the sum of five per cent. of the value of the property on the tax duplicate of such city, and to issue bonds therefor, in the name of said city, under the corporate seal thereof, bearing interest at a rate not to exceed seven and three-tenths per centum per annum, payable semi-annually at such places and in such sums as shall be deemed best by said board. Said bonds shall be signed by the president of said board and the mayor of such city, and attested by the city auditor or clerk, who shall keep a register of the same, and shall be secured by a mortgage on the line of railway, and its net income, and by the pledge of the faith of the city, and a tax not exceeding five mills on the dollar, which it shall be the duty of the council thereof annually to levy, sufficient, with said net income, to pay the interest and provide a sinking fund for the final redemption of said bonds; provided, that no money shall be borrowed or bonds issued until after the question of providing the line of railway specified in the resolution shall be submitted to a vote of the qualified electors of said city, at a special election to be ordered by the council thereof, of which not less than twenty days' notice shall be given in the daily papers of said city; and provided further, that two-thirds of said electors voting at said election shall decide in favor of said line of railway. The returns of said election shall be made to the city clerk, and be by him laid before the city council, who shall declare the result by resolution. The bonds issued under the authority of this section, shall not be sold or disposed of for less than their par value.

Sec. 2. *Duty of solicitor, court, etc.* If two-thirds of the votes cast at said election shall be in favor of providing the line of railway as specified in the first section, it shall be the duty of the city solicitor forthwith to file a petition in the court of common pleas of the county in which said city is situate, praying that the judges thereof will appoint five trustees, to be called the trustees of ——— railway (the blank to be filled with the name given to the railway in the resolution); and it shall be the duty of said judges to make the appointment and to enter the same on the minutes of the court. They shall enter into bond to the city in such sum as the court may direct, with one or more sufficient sureties, to be approved by the court, conditioned for the faithful discharge of their duties. The bond so taken shall be deposited with the treasurer of the corporation for safe keeping.

Sec. 3. *Duties of trustees, etc.* The said trustees and their successors shall be the trustees of the said fund, and shall have the control and disbursement of the same; they shall expend said fund in procuring the right to construct, and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph between the termini specified in said resolution; and for the purposes aforesaid shall have power and capacity to make contracts, appoint, employ and pay officers and agents, and to acquire, hold and

possess all the necessary real and personal property and franchises in this state; they shall also have power to receive donations in land or money, bonds and other personal property, and dispose of the same in aid of said fund.

SEC. 4. *President of the board—duties, etc.* The said trustees shall form a board, and shall choose one of their number president, who shall also be the acting trustee, with such power as the board may, by resolution, from time to time confer upon him. A majority of said trustees shall constitute a quorum, and shall hold regular meetings for the transaction of business at their office in the city under whose action they are appointed; but they may adjourn from time to time to meet at any time they may think proper; they shall keep a record of their proceedings, and they shall cause to be kept a full and accurate account of their receipts and disbursements, and make a report of the same to the city council annually, and whenever requested by a resolution of the city council. No money shall be drawn from said fund but upon the order of said board, except their own compensation, which shall be paid out of the same upon the allowance of the court appointing them, and shall be apportioned according to their respective services.

SEC. 5. *Security of officers.* Said trustees shall have power to take such security from any officer, agent or contractor, chosen, appointed or employed by them, as they shall deem advisable. They shall not become surety for any such officer, agent or contractor, or be interested directly or indirectly in any contract concerning said railway. They shall be responsible only for their own acts.

SEC. 6. *Removal for delinquency, etc.* Whenever the city council of any city shall have reason to believe that any one of said trustees has failed in the faithful performance of his trust, it shall be their duty to instruct the city solicitor to apply to the court that appointed said trustee by petition, praying that such trustee be removed, and another appointed in his place; and when a vacancy shall occur in said board from any other cause, it shall be filled in like manner. If the said city solicitor shall fail to make application in either of the foregoing cases, after request by any holder of the bonds issued by said trustees, or by a tax-payer of the corporation, such bondholder or tax-payer may file a petition in his own name, on behalf of the holders of such bonds, for like relief, in any court having jurisdiction; and if the court having [hearing] the action shall adjudge in favor of the plaintiff, he shall be allowed, as part of his costs, a reasonable compensation for his attorneys.

SEC. 7. *Appropriation of land, etc.* Whenever in the construction of a line of railway, as herein provided, it shall be necessary to appropriate land for the foundation of the abutments or piers of any bridge across any stream within this state, or for any other purpose, or to appropriate any rights or franchises, proceedings shall be commenced and conducted in accordance with the act entitled an act to provide for compensation to the owners of private property appropriated to the use of corporations, passed April 3, 1852, and the acts sup-

plementary thereto, except that the oath and verdict of the jury and the judgment of the court, shall be so varied as to suit the case.

SEC. 8. *Purchase of right of way, etc.* Whenever there shall be between the termini designated in any resolution passed under this act, a railroad already partially constructed, or rights of way acquired therefor, which can be adopted as part of the line provided for in said resolution, the trustees of said line may purchase the said railroad and rights of way, and pay for the same out of the trust fund.

SEC. 9. *Portions may be rented or leased.* The said trustees shall have power, as fast as portions of the line for which they are trustees are completed, to rent or lease the right to use and operate such portions, upon such terms as they may deem best; but such rights shall cease and determine on the final completion of the whole line, when the right to use and operate the same shall be leased by them to such person or company as will conform to the terms and conditions which shall be fixed and provided by the council of the city by which the line of railway is owned.

SEC. 10. *Compensation of trustees.* The city council of any city passing a resolution as provided in the first section of this act, may appropriate and pay to the said trustees, out of the general fund of said city, such sum as may be necessary for defraying the expenses of the election, and said sum shall be repaid out of said trust fund when raised.

SEC. 11. This act shall take effect on its passage.

METROPOLITAN POLICE.[1]

SEC. 1. *Be it enacted, etc.*, That sections one, five, six, eight, nine, eleven, twenty-one, twenty-three, twenty-six, twenty-nine and thirty-five of said act be amended so as to read as follows:

That all powers and duties connected with, and incident to the government and discipline, in cities of the first class with a population less than one hundred thousand inhabitants at the last federal census, shall be as hereinafter more especially provided, vested in and exercised by a board of police in each city, composed of four commissioners of police, together with the mayor of said cities, who shall be *ex-officio* a member of said board and the president thereof, a majority of whom shall constitute a quorum for the transaction of business. Act of 1866, as amended in 1868, 65 O. L. 45, § 1.

The said board of police shall at any time have power to appoint a superintendent of the police force, a captain of police, and one captain in addition for each fifty patrolmen called into service more than the first fifty, and a sergeant of police to each twelve patrolmen, and also regular or compensated patrolmen, not exceeding one to each one thousand inhabitants, as shown by the last federal census; provided, that the number of said patrolmen may be increased by and with the con-

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[1] See ante, p. 61.

sent of the city council; and, provided also, that the said board shall have the power, in cases of emergency, to appoint as many special patrolmen as they may think proper, but such appointment shall be reported to and be subject to the action of the city council at its next meeting. The board may, from the patrolmen, appoint detectives, not exceeding three in number, one of whom shall be designated as chief of detectives, who shall act as secret police or detectives, and may, each, receive an additional compensation of one hundred dollars per year; and when, from any cause, a vacancy shall exist in the number so first appointed, the board may appoint to said vacancy the patrolman which the record required to be kept, as hereinafter provided, shall show to be most meritorious. Said board shall also have power to remove any superintendent, captain, or chief of detectives, and for cause to be assigned on a public hearing, and on due notice according to rules to be promulgated by them, to remove or suspend from office, or for a definite time deprive from pay, any other member of such police force, to make rules and regulations for the discipline and government of said force, and shall cause the same to be published; and to make and promulgate general and special orders to said force, through the superintendent of police. Act of 1866, as amended in 1868, 65 O. L. 45, § 5.

That said board shall appoint some suitable person to act as secretary, who shall receive such annual salary as may be determined upon by the board of police, and shall perform such duties as are hereinafter provided, and shall hold his office during the pleasure of said board. Act of 1866, as amended in 1868, 65 O. L. 46, § 6.

It shall be the duty of the board of police, and of the force hereby constituted, at all times of the day and night, within the boundaries of said cities, to preserve the public peace, to prevent crime, and arrest offenders, to protect rights of persons and property, to guard the public health, to preserve order, to remove nuisances existing in public streets, roads, places and highways, to report all leaks or other defects in water-pipes and sewers to the proper authorities, to provide a proper force at every fire, in order that thereby the firemen and property may be protected, to protect strangers and travelers at steamboat and ship landings and railway stations, and generally to obey and enforce all ordinances of the city council, criminal laws of the state and of the United States. Whenever any crime shall be committed in said cities, whether the person or persons accused or suspected of being guilty shall flee from justice or not, the superintendent of police shall immediately report to the chief of detectives all facts which may have come to his knowledge concerning the offense, or the accused or suspected parties; and the board of police may, in their discretion, authorize any person or persons belonging to the police force to pursue and arrest such accused or suspected person or persons, and return them to the proper criminal court having jurisdiction of the offense for trial. Act of 1866, as amended in 1868, 65 O. L. 46, § 8.

The qualification, enumeration and distribution of duties, mode of trial and removal from office of each member of said police force, except

as provided in section five, shall be particularly defined and prescribed by rules and regulations of the board of police; and no person shall be appointed to or hold office in the police force aforesaid, who is not a citizen of the United States and a resident of the city; and provided, that no sergeant or patrolman shall be removed therefrom except upon written charges preferred against him to the board of police, and after an opportunity shall have been afforded him of being heard in his defense; but the board of police shall have power to suspend any member of the police department of the city, pending the hearing of the charges preferred against him; and, provided, that whenever any vacancy shall occur in the office of captain of police, the same may be filled by an appointment from among the persons then in the force as sergeants of police, and a like vacancy in the office of sergeant of police may be filled by appointment from among the persons then in office as police patrolmen. The police commissioners shall receive no compensation for their services. The superintendent of police shall receive a salary of not exceeding fifteen hundred dollars per annum. Each captain shall receive a salary of not exceeding one thousand dollars per annum; and each sergeant a salary not exceeding nine hundred dollars. The pay of each police patrolman shall not exceed the sum of eight hundred dollars per annum. The pay in all cases shall be fixed by said board of police commissioners. The salaries shall be paid monthly to each person entitled thereto. No member of the board of police, or of the police force, shall receive, or share in for his own benefit, under any pretense whatever, any present, fee, gift or emolument, for police service, other than the regular salary and pay provided by this section, except by the unanimous consent of the board of police; nor shall any such member receive or share in any fee, gift or reward from any persons who may become bail for the appearance of any arrested, accused or convicted person, or who may become surety for any such person on appeal from the judgment or decision of any court or magistrate, or any fee, gift or reward, in any case, from an attorney-at-law who may prosecute or defend any person arrested or prosecuted for any offense within the county in which such cities may be situated; nor shall any such member, either directly or indirectly, interest himself or interfere in any manner whatever, in the employment or retainer of any attorney to aid in the defense of persons arrested or accused; and for any violation of either of the foregoing provisions, the person so offending shall be immediately removed from the police force. Act of 1866, as amended in 1868, 65 O. L. 46, § 9.

All rewards, fees, proceeds of gifts and emoluments that may be allowed by the boards of police, to be paid and given for, or on account of extraordinary services of any member of the police force, and all money arising from the sale of unclaimed property or money, shall be paid into the city treasury, and shall constitute a fund to be called "the police life and health insurance fund," and the persons who shall from time to time constitute the boards of police, are hereby declared the trustees of said fund, and may invest the same as they shall see fit, either in whole or in part, and shall have power to draw

the same from the treasury for that purpose. Act of 1866, as amended in 1868, 65 O. L. 47, § 11.

It shall be the duty of the board of police to prepare and submit to the city auditor on or before the first day of May in every year, an estimate of the whole cost and expense of providing for and maintaining the police department of said city within the current fiscal year, which estimate shall be in detail, and shall be laid by the city auditor before the city council, and the same shall be, by the city council of said city, provided for in the general tax assessment, by levy to be laid on property in said city. Said money, when collected, shall be paid into the city treasury, and shall be styled the "police fund," and shall be drawn out therefrom for police purposes of said city, under the fiscal regulations established by this act. Act of 1866, as amended in 1868, 65 O. L. 47, § 21.

No expenses, other than salaries and pay herein provided, shall be incurred by the board of police, except for rents, record-books, stationrey, printing, telegraphing, badges, clubs and furniture of necessary rooms and stations, advertising, fuel and lights, and food for prisoners, unless the same shall be expressly authorized and provisions therefor made, as a city charge, by the city council of the city within which the expenditures become necessary. The books and accounts kept by said board shall at all times be subject to the inspection of the city council, and the city council may at any time require any information respecting the same, the disclosure of which will not impair the usefulness and efficiency of the police department. Act of 1866, as amended in 1868, 65 O. L. 47, § 23.

The superintendent of police shall make to the secretary of the board daily reports of such facts as may come to his knowledge from the patrolmen, and the secretary shall make to the board monthly reports, in writing, of the state of the police force, with such statistics and suggestions as he may deem advisable for the enforcement of the police government and discipline. The board of police shall, on or before the first Monday in April, in each year, report in writing the condition of the police to the city council. Act of 1866, as amended in 1868, 65 O. L. 48, § 26.

Either of said commissioners of police may at any time be removed by the city council, upon good cause being shown, three-fourths of all the members concurring, and in all cases where charges are made out against a commissioner, he shall have an opportunity to present evidence in his behalf. Act of 1866, as amended in 1868, 65 O. L. 48, § 29.

All statutes, parts of statutes and provision of law, inconsistent with the provisions of this act, are hereby repealed, together with all modes and qualifications of appointment to office as members of police departments, or of elections to office therein, inconsistent with the provisions of this act; such appeal [repeal], however, to take effect and become operative only when the board of police provided for by this act shall be duly organized, and a police force shall be appointed by said board and sworn into office. The president of the board of police shall notify the superintendent of police, in writing, and pub-

lish a notice in two daily papers of the city, stating the time of the organization of said police force. Act of 1866, as amended in 1868, 65 O. L. 48, § 35.

SEC. 2. That immediately after the passage of this act, it shall be the duty of the city council of cities of the first class, having a population less than one hundred thousand inhabitants, to provide by ordinance, to be passed by a vote of three-fourths of all the members, for dividing said cities into four districts, by wards, having reference to as equal an apportionment of population and contiguity of territory as may be, to be called police districts, which said districts shall be numbered one, two, three, and four, which said districts shall not thereafter be changed except by ordinance passed by a vote of three-fourths of all the members of the council. Act of 1868, 65 O. L. 48, § 2.

SEC. 3. That at the next annual city election in said cities of the first class, having a population of less than one hundred thousand inhabitants, after the passage of this act, there shall be elected in each of said districts, by the qualified electors thereof, one member of the board of police commissioners, and of the four thus elected one shall serve one year, one two years, one three years, and one four years; and for the purpose of fixing their respective terms, they shall determine by lot, and at each annual city election thereafter, there shall be elected one member of said board, to be elected by the district in which the retiring member was elected; and the commissioners so elected, together with the mayor as herein provided, shall constitute the board of police. That after the expiration of the term aforesaid, the term of office of the commissioners to be elected as herein provided shall be four years; and any vacancy which may happen in said board of commissioners shall be filled by appointment by the remaining members thereof, to continue until the next annual city election; and said commissioners shall, before entering upon the duties of their office, be sworn to a faithful performance thereof. Act of 1868, 65 O. L. 48, § 3.

SEC. 4. That from and after the passage of this act, the powers of the metropolitan police commissioners then in office, in cities of the first class having a population of less than one hundred thousand inhabitants, shall cease, and the entire control of the police force of such cities shall vest in and be exercised by the mayor thereof; and the mayor of any such city is hereby invested with such powers as are herein provided for the board of police commissioners, with full power to exercise the same, until said city shall be districted and commissioners elected and qualified as herein provided. Act of 1868, 65 O. L. 49, § 4.

SEC. 5. That the mayor of any city of the first class having a population of less than one hundred thousand inhabitants, shall have power to suspend any officer of the police force and appoint a person to perform the duties of such suspended officer until the next regular meeting of the board of police commissioners, when his action shall be submitted to said board, and the board shall determine whether such suspension shall be permanent, and if said board shall so deter-

mine, they shall proceed to make an appointment to fill the vacancy. Act of 1868, 65 O. L. 49, § 5.

SEC. 6. That all rules and regulations for the government of the police force established by the metropolitan police commissioners, as provided for by the act to which this is an amendment, not inconsistent with the provisions of this act, shall continue in force until altered, amended or abolished by the board of police commissioners provided for by this act. Act of 1868, 65 O. L. 49, sec. 6.

SEC. 7. That sections one, two, three, four, five, six, eight, nine, eleven, thirteen, twenty-one, twenty-three, twenty-six, twenty-nine, and thirty-five, of the act to which this is an amendment, be and the same are hereby repealed. Act of 1868, 65 O. L. 49, § 7.

SEC. 8. Said board shall assume and exercise the entire control of the police force of said city, and shall possess full power and authority over the police organization, government, appointments and discipline within said cities. It shall have the custody and control of all public property, books, records and equipments belonging to the police department, and shall have power to erect and maintain all such lines of telegraph in such places within the said city, as for purposes of police the board shall deem necessary, whenever the common council shall authorize the establishment of such telegraph line or lines, and provide for the cost thereof. Act of 1866, 63 O. L. 105, § 7.

SEC. 9. Any citizen of such city, with a view to the trial and suspension or removal from office of any officer or patrolman of the police force, may on oath, in writing, prefer or make before the board, charges or complaint touching the character and competency, or affecting the acts, conduct or omission of such officer or policeman, or for violation of or misconduct, as defined or prescribed by the rules and regulations of the board; and said board, after reasonable notice, in the discretion of the board, to the person charged, shall proceed to the trial of said officer or policeman on such charges or complaint, and shall have power to and shall issue subpœnas, attested in the name of the president of the board, to compel the attendance of witnesses, to administer oaths and affirmations, and generally shall, for the purposes of such trial, have and exercise the powers and duties of justices of the peace in civil cases, so far as the same are applicable, and may make an order of removal or suspension for some certain period. If, on such trial, said charges or complaint shall be sustained, such officer or policeman shall pay the cost of such proceedings, and the same may be deducted and withheld from his pay, and in case of his suspension, his pay shall also cease from the date of the charges and during the period of suspension. In trials under this section the same costs shall be charged and taxed as in trials before justices, and be collected on execution, to be issued by the police clerk of said cities on certificate of the same by the board, and order for execution, said costs when collected to be paid to the treasurer of the board for the benefit of those concerned; but the said board shall not tax or receive any fees for themselves or for any member thereof. Act of 1866, 63 O. L. 107, § 10.

SEC. 10. Whenever any member of the police force in actual performance of his duty, and in consequence of the performance of such duty, shall become bodily disabled, his necessary expenses during the time his disabilities, as aforesaid, continue and consequent thereon, may be paid from the fund provided for in the preceding section, at the discretion of the said board of police. The board shall inquire into the circumstances, and if satisfied the charge upon said fund is correct, may, in writing, order the same to be paid by the draft of the said trustees upon the said fund, each trustee writing his signature thereto; but the provisions of this section shall not apply to special patrolmen appointed as hereinafter provided, at the request and expense of private parties. Act of 1866, 63 O. L. 108, § 12.

SEC. 11. It is hereby made the duty of the board of police, for more effectually distributing and enforcing its police government and discipline, to divide the said cities into precincts without regard to ward boundaries, and to assign captains of police and sergeants of police to each of the said precincts as they shall deem for the best interest of said cities. The board may, from time to time, establish a station or sub-station in each precinct or division for the accommodation of the police force on duty therein. It shall promulgate all regulations and orders through the superintendent of police; and it shall be the duty of the police force to respect and obey the said superintendent, subject to the rules and regulations and general orders of the board. Act of 1866, 63 O. L. 108, § 14.

SEC. 12. The said board of police is hereby authorized to appoint persons of suitable character who may be in the employment of the city in other branches or departments, special policemen or patrolmen; provided, such special policemen shall not be paid for their services as policemen either from the police fund or the city or county treasury. Such policemen shall possess the same power as the regular police patrolmen and shall obey the rules and regulations of the board, and conform to its general discipline. Act of 1866, 63 O. L. 108, § 15.

SEC. 13. The board of police, whenever it shall see fit, may, on the application of any person or persons, showing the necessities thereof, appoint and swear in any number of additional patrolmen to do duty at any place within the cities, at the charge and expense of the person or persons by whom the application shall be made, and the patrolmen so appointed shall be subject to the orders of the board of police, and shall obey the rules and regulations of the board, and conform to its general discipline, and to such other special regulations as may be made, and shall wear such dress or emblem as the board may direct, and shall, during the term of their holding appointment, possess all the powers, privileges and duties of the patrol force herein prescribed; provided, however, that the party so applying for such appointment shall have first paid into the trust fund hereinbefore provided for, the sum of five dollars for each special patrolman thus appointed. The person so appointed may be removed at any time by the board of police, without assigning cause therefor. Act of 1866, 63 O. L. 108, § 16.

SEC. 14. No member of the police force, under penalty of forfeiting the pay which may be due to him, shall withdraw or resign from the police force, unless he shall have given two weeks' notice thereof, in writing, to the superintendent of police; no person who shall ever, for cause, have been removed from the police force established by this act, shall be reappointed by the board of police to any office in the said police force, except by the unanimous consent of the board. Act of 1866, 63 O. L. 109, § 17.

SEC. 15. All stolen or other property taken by the members of the police force, shall be deposited and kept in a place designated by the board of police; and in case of the neglect or refusal of any officer to so deposit the property taken or found in the possession of any person or persons arrested, he shall be deemed guilty of a misdemeanor, and subject to indictment or information, and be fined in a sum not exceeding three thousand dollars, and in no case less than the value of the property, or be imprisoned in the county jail not exceeding one month; and the sentence of the court in such cases, shall operate to vacate the office of the person so convicted. Every such article of property shall be entered in a book kept for that purpose by the secretary of the board, together with the name of the owner, if ascertained, and the name of the place where found, and of the person from whom taken, with the general circumstances and the date of its receipt, and the name of the officer recording the same. An inventory of all money or other property shall be given to the party from whom the same was taken; and in case the same shall not, within thirty days after such arrest and seizure, be claimed by any other person or persons, it shall, unless otherwise ordered by the board, be delivered to the person from whom the same was taken, and to no other person, either attorney, agent, factor or clerk, except by special order of the board. In case said money or property shall, within thirty days, be claimed by any other person or persons, it shall be retained by said custodian until after the discharge or conviction of the person from whom the same was taken and so long as the same may be required as evidence in any case in court, and if such claimant or claimants shall establish, to the satisfaction of the police judge, that he or they are the rightful owners, the same shall be restored to him or them; otherwise it shall be returned to the accused personally, and not to any attorney, agent, factor or clerk of such accused person, except upon special order of the board, after all liens and claims in favor of the board and the city, against the same, shall have first been discharged and satisfied. The board shall cause to be kept books for the registry of lost, missing or stolen property, for the general convenience of the public, and of the police force of the city. It shall also cause to be kept books of record, wherein shall be entered the name of every member of the police force, his time and place of nativity, the time and place where he became a citizen (if he was born out of the United States), his age, his former occupation, number of family, and the residence thereof; the date of appointment or dismissal from office, with the cause of the latter; and in every such record sufficient space shall be left against all such entries, wherein to make

record of the number of arrests made by such members of the police force, or of any special services deemed meritorious by the captains of police. It shall also cause to be kept in proper books, the accounts of the board, and a record of their proceedings; and they shall preserve and file copies of all bills audited and allowed, and keep an accurate account of all the expenses of the police department. The board of police shall also cause to be kept and bound, all police returns and reports. Act of 1866, 63 O. L. 109, § 18.

SEC. 16. It shall be the duty of the board of police to provide, when it shall be required, at the expense of said city or cities, all necessary accommodations, within such precincts as shall be contained within the boundaries of said city or cities for the station-house required by the board of police, for the accommodation of the police force of such precincts for the lodging of vagrant and disorderly persons, and for the temporary detention of persons arrested for offenses. It shall also be the duty of said board of police to furnish the same suitably, and to warm and light the same by day and night; and in every case of arrest, the same shall be made known to the captain or sergeant upon duty in the precincts wherein such arrest was made, by the person making the same, and it shall be the duty of the said captain or sergeant, as soon as practicable after such notice, to make written return thereof, according to the rules and regulations of the board of police, together with the name of party arrested, the offense, the place of arrest and the place of detention. All persons arrested by the officers or members of the police force shall be detained, while in their custody, only in the places provided for that purpose; and no trial or examination of any persons arrested shall be held in the office of the superintendent of the police, or of the board; but the persons so arrested shall be examined in the police court of said city or cities before the police judge, or, in the absence of the judge, before the mayor. Necessary and usual articles of clothing or personal apparel upon the person, or in the possession of persons arrested and detained, shall not be taken or seized by the police, unless there be reason to suspect that the clothing has been stolen or obtained unlawfully. The board of police shall provide suitable accommodations within said city or cities for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in apartments other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of the police judge, in committing witnesses, to have regard to the rules and regulations of the board of police in respect to their detention. Every person arrested by the police, charged with the violation of any city ordinance, may give special bail for his appearance to answer to such charge; but no member of the police force shall become or furnish bail for any person arrested. Act of 1866, 63 O. L. 110, § 19.

SEC. 17. The necessary expenses for the maintenance of the police department hereby created within the said city or cities, shall be a city charge. Act of 1866, 63 O. L. 111, § 20.

SEC. 18. All moneys hereafter to be paid to any person or persons out of the police fund shall be certified by the president or acting president of the board of police, to the secretary, who shall draw his warrant on the treasurer therefor, stating therein the fund to which it is chargeable, and the person to whom payable; and such warrant shall be countersigned by the president, or, in his absence, by the acting president of the board of police. Act of 1866, 63 O. L. 111, § 22.

SEC. 19. The board of police shall, at all times, cause the ordinances of the city to be properly enforced; and it shall be the duty of said board at all times, whenever consistent with the rules and regulations of said board, and with the requirements of this act, to furnish all the information desired, and comply with all the requests made by the city council of said cities, or by the mayor thereof, to quell riots, suppress insurrections, protect the property, and preserve the public tranquillity. The board of police shall have the power to issue subpœnas, tested in the name of its president, to compel before it the attendance of witnesses before any proceeding authorized by its rules and regulations. Each commissioner of police, the superintendent of police, and the secretary of the board of police, are hereby given power to administer, take, receive and subscribe all affirmations and oaths to any witnesses summoned and appearing in any matter or proceeding authorized as aforesaid, or to any depositions necessary by the rules and regulations of the board. Any willful and corrupt false swearing by any witness or person making oath or deposition before any of the officers last mentioned, to any material fact, in any necessary proceedings under said rules and regulations, shall be deemed perjury, and punished in the manner now prescribed by law for such offense. The provisions of law now existing in respect to attachment of witnesses before the police court and justices of the peace, and to the compulsory attendance of the said witnesses, to appear and testify before them, are hereby applied to the case of witnesses subpœnaed before the board of police. Act of 1866, 63 O. L. 112, § 24.

SEC. 20. The board of police shall require and make suitable provisions respecting security to be entered into by any and all members of the police force, for the taking, by the members of the police force, of an oath of office, and the registry of the certificate of the same in a book, to be kept for that purpose by the board, which oath of office may be taken before any commissioner of police, who is hereby empowered to administer and receive the same. Act of 1866, 63 O. L. 112, § 25.

SEC. 21. No person holding office under this act shall be subject to jury duty, or to arrest on civil process, while actually on duty. Act of 1866, 63 O. L. 112, § 27.

SEC. 22. It shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars, or imprisonment in the county jail not less than one month, nor more than three months, or both fine and imprisonment, for any person, without justifiable or excusable cause,

to use personal violence upon any member of the police force, when in the discharge of his duty, or for any person, not a member of the police force, to falsely represent himself as being such member with a fraudulent design. Act of 1866, 63 O. L. 112, § 28.

Sec. 23. Any one of said commissioners, or any member of the police force, who shall, during his term of office, accept or hold any office elective by the people, or who shall, during his term of office, be publicly nominated for any office elective by the people, and shall not, within ten days succeeding the same, publicly decline the said nomination, shall be, in either case, deemed thereby to have resigned, and to have vacated his office as such commissioner. Act of 1866, 63 O. L. 113, § 30.

Sec. 24. The city council of said cities are hereby empowered and directed, annually, to order and to cause to be collected and raised by a tax upon the estates, real and personal, subject to taxation according to law, within the said cities, the sums of money as aforesaid, annually estimated for the said total expense of the metropolitan police, authorized by this act. Act of 1866, 63 O. L. 113, § 31.

Sec. 25. In case at any time, or for any cause, the services of a deputy superintendent shall be required, the board of police are hereby authorized to appoint any member of the police force to act in that capacity. Act of 1866, 63 O. L. 113, § 32.

Sec. 26. No policeman or officer of police shall, while on duty, be at liberty to enter any drinking or gaming saloon, or other place where liquors are sold to be drank on the premises, or house of prostitution, except for the purpose of discharging some of the duties of his office. Act of 1866, 63 O. L. 113, § 33.

Sec. 27. The offices of city marshal and deputy marshal of said cities, are hereby abolished, and the duties of said offices shall hereafter be performed by the superintendent of police, or by the captains and sergeants of police, under his directions, in accordance with the provisions of this act; but this section shall not be operative until the superintendent of police, or captain of police, authorized by this act to be appointed, shall be sworn into office. Act of 1866, 63 O. L. 113, § 34.

Sec. 28. This act shall take effect on the first day of May next. Act of 1866, 63 O. L. 114, § 36.

Sec. 29. *Be it enacted, etc.*, That cities of the first class which have been advanced to that grade between decennial periods, be and they are hereby divided into the same number of police districts as there are wards in such cities. Such police districts shall be bounded as the wards of such city are bounded and numbered as said wards are numbered, the first ward constituting the first police district of such city, the second ward constituting the second police district, and so on, each of such wards constituting a police district of such city. Act of 1868, 65 O. L. 151, § 1.

Sec. 30. All powers and duties connected with and incident to the appointment, regulation and government of a police force, or connected with and incident to the police power and government of such city,

shall, in all cities of the class named in section one of this act, be vested in a police board, to be elected in the manner hereinafter specified. Act of 1868, 65 O. L. 151, § 2.

Sec. 31. On the second Tuesday of May, 1868, the qualified electors of each of said police districts shall, by a plurality of votes, elect one member of the police board, who shall be a resident of and have the qualifications of an elector in the police district for which he is elected. Act of 1868, 65 O. L. 151, § 3.

Sec. 32. The term of office of members of the police board shall be two years and until their successors shall be elected and qualified; provided, however, that of the number elected at the first election to be held under the provisions of this act, the members of said board who are elected from police districts with even numbers, shall hold said office two years, and the members who are elected from police districts with odd numbers shall hold their office one year; and thereafter elections of members of the police board shall be held in such police districts at the regular annual city election, according as the term of office of the member of the police board from that district shall expire. The city council shall have power to fill any vacancy that may occur in the police board by appointing a member thereof who shall hold office until the next regular city election, when a member shall be elected from the proper police district to fill such vacancy for the unexpired term; provided, that the city council shall appoint no person as a member of said police board who is not a resident of and elector in the police district for which he is appointed. Act of 1868, 65 O. L. 151, § 4.

Sec. 33. The members of the police board so elected and the mayor of such city (who shall be *ex-officio* a member) shall constitute the police board of such city. The mayor shall, when present, act as president of such board, and a majority of the members shall constitute a quorum for the transaction of business; before entering upon the duties of said office each member shall take and subscribe to an oath or affirmation faithfully and honestly to perform its duties. Act of 1868, 65 O. L. 152, § 5.

Sec. 34. Said police board shall have power to appoint one captain of police, who shall also be acting superintendent, whose salary shall be fixed by the police board, but shall not exceed twelve hundred dollars per annum; one sergeant of police for every ten patrolmen, whose salary shall not exceed nine hundred dollars per annum, and shall be fixed by the police board; and such number of patrolmen as the police board may think expedient, but not exceeding one patrolman for each fifteen hundred inhabitants in such city; the salary of the patrolmen shall be fixed by the police board, but shall not exceed eight hundred dollars per annum. The police board may also appoint detectives or secret police, not exceeding three in number, whose salaries shall be fixed by the police board, but shall not exceed nine hundred dollars per annum. The police board may also appoint a secretary, and define his duties. The secretary of the police board shall hold his office during the pleasure of the board, and shall receive such compensation as

the board may determine, not exceeding nine hundred dollars per annum. The members of the police board shall receive no compensation for the r services. All salaries of the members of the police department shall be paid monthly. The police board may, in case of emergency, appoint special patrolmen, but shall report to the city council at its next meeting the names and number of such special patrolmen, the occasion of their appointment as such, and the length of time for which such appointments are made; unless the city council shall approve of such appointment, the same shall cease and terminate, and no payment shall be paid to any person for services as special patrolman until the same shall be approved by the city council. Act of 1868, 65 O. L. 152, § 6.

Sec. 35. The police board shall assume, have and exercise the entire control of the police force of said city, and shall make, publish and enforce rules and regulations for the government of such police force. It shall also have the custody and control of all public property, books, records and equipments belonging to the police department. It shall have power at any time, for good cause shown, to suspend or remove any officer or member of the police force, or it may, at any time, by a vote of two-thirds of the members of the board, suspend or remove any officer or member of the police force without assigning any reason for such suspension or removal. Whenever it shall appear to the satisfaction of the board that any member or officer of the police force has received corruptly from any person any sum of money, gift, fee or reward, or has used his office for purposes of extortion or oppression, it shall be the duty of the board to at once dismiss the person so offending from the police force. The salary of any officer or member of the police force shall cease from the time of his suspension or dismissal. Act of 1868, 65 O. L. 152, § 7.

Sec. 36. Any member of the police board, or any officer or member of the police force, who shall hold or accept any office which is elective by the people, shall be deemed thereby to have resigned his office of member of the police board, or as member of the police force, and such vacancy so created shall be filled in the manner provided by law. The city council shall have power to remove from office any member of the police board, three-fourths of such council concurring therein, but no member of said police board shall be removed from office, except upon charges made in writing, and after opportunity given to be heard in his defense. Act of 1868, 65 O. L. 153, § 8.

Sec. 37. It shall be the duty of the police board to prepare and submit to the city council, on or before the first day of May in each year, an estimate of the whole cost and expense of providing for and maintaining the police department of said city within the current fiscal year, which estimate shall be in detail, and shall be laid (by the city auditor) before the city council, and the same shall be, by the city council of said city or cities, provided for in the general tax assessment, by levy to be laid on property in said city. Said money, when collected, shall be paid into the city treasury, and shall be styled the "Police Fund," and shall be drawn out therefrom for police purposes of

said city, on the order of the police board, as may be necessary to pay the expenses of the police department. Act of 1868, 65 O. L. 153, § 9.

SEC. 38. No expenses, other than salaries and pay herein provided, shall be incurred by the police board, except for rents, record books, stationery, printing, telegraphing, badges, clubs and furniture of necessary rooms and stations, advertising, fuel and lights, and food for prisoners, unless the same shall be expressly authorized and provisions therefor made, as a city charge, by the city council of the cities within which the expenditures became necessary. The books and accounts kept by said board shall at all times be subject to the inspection of the city council, and the city council may, at any time, require any information respecting the same, the disclosure of which will not impair the usefulness and efficiency of the police department. Act of 1868, 65 O. L. 153, § 10.

SEC. 39. The acting superintendent of police shall make to the secretary of the board daily reports of such facts as may come to his knowledge from the patrolmen, and the secretary shall make to the board monthly reports, in writing, of the state of the police force, with such statistics and suggestions as he may deem advisable for the enforcement of the police government and discipline. The boards of police shall, on or before the first Monday in March in each year, report in writing the condition of the police within said cities to the city council. Act of 1868, 65 O. L. 153, § 11.

SEC. 40. From and after the passage of this act, the powers and duties of the metropolitan police commissioners shall cease and terminate in cities of the first class advanced to that grade between decennial periods. The city council of cities of that class shall, on and after the passage of this act, assume and exercise such of the powers and duties herein granted and imposed as may be necessary for the government and regulation of the police force of such city; such city council to continue to exercise the powers thus granted until the election and qualification of the police board provided for in this act, and no longer. Act of 1868, 65 O. L. 154, § 12.

SEC. 41. The provisions of an act entitled "an act to authorize the appointment of metropolitan police commissioners in cities of the first class with a population of less than one hundred thousand inhabitants at the last federal census," passed April 5, 1866 (vol. 63 O. L., p. 104), and of an act supplementary thereto, passed March 29, 1867 (vol. 64 O. L., p. 80), shall not apply to cities of the first class which have been advanced to that grade between decennial periods, and the said acts of April 5, 1866, and of March 29, 1867, in so far as the same apply to cities of the first class advanced to that grade between decennial periods, be and the same are hereby repealed, together with all statutes, parts of statutes, and provisions of law inconsistent with the provisions of this act. Act of 1868, 65 O. L. 154, § 13.

SEC. 42. The provisions of an act entitled an act to amend "an act authorizing the appointment of metropolitan police commissioners in cities of the first class with a population of less than one hundred

thousand at the last federal census," passed April 5, 1866 (O. L. vol. 63, p. 104), passed April 2, 1868, shall not apply to cities of the first class which have been advanced to that grade between decennial periods. Act of 1868, 65 O. L. 154, § 14.

SECOND-HAND FURNITURE AND OLD METAL.

An act to regulate, in cities of the first and second class, stores or shops for the purchase, sale, or exchange of old metals, or second-hand furniture.

[Passed and took effect March 31, 1864.—61 vol , Stat. 128.]

SEC. 1. *Be it enacted, etc.*, That in all cities of the first and second class, every keeper of a shop or store for the purchase, sale, or barter of old metals, second-hand furniture, or second-hand articles of any kind, shall put up in some suitable or conspicuous place in his shop or store, a sign having his name and occupation legibly inscribed thereon, and shall keep a book in which shall be written at the time of every purchase of any such old metals or second-hand articles, a description of the article or articles purchased, the name, age, and residence of the person from whom, and the day and hour when such purchase was made.

SEC. 2. That no keeper of any such shop or store shall, directly or indirectly, purchase or receive, by way of barter or exchange, any old metals, second-hand furniture, or other second-hand articles, of any minor or apprentice, knowing or having reason to believe him to be such.

SEC. 3. No keeper of any such shop or store shall purchase or receive, by way of barter or exchange, any of the articles aforesaid from any person whatever, after the hours of nine o'clock at night, or before the hour of seven in the morning.

SEC. 4. That any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not more than five hundred dollars, at the discretion of any court of competent jurisdiction.

SEC. 5. This act shall take effect from and after its passage.

APPENDIX.

We have already stated that it was impracticable to republish in this work all the statutes and parts of statutes that relate to cities and villages. We have felt justified in departing from the rule of including none but statutes of a general nature, in favor of the two railroad acts, passed at the last session, by reason of their great importance. And we believe that an enumeration in this place of the acts relating to cities and villages, not embraced in this work, would serve no useful purpose. So far as they are general in their character, they are all collected in Swan & Critchfield's and Swan & Sayler's Statutes, and the 66th Volume of Laws. Among these is the act providing what municipal officers shall have copies of the annual volume of laws; the act to prevent animals running at large in the streets; the act to secure, in case of fire or other danger, safe egress from public halls and buildings; the acts in relation to gas companies, houses of refuge and correction, reform schools, infirmaries, inspectors, street railroads and schools. Others of a local character are collected there, and all of this class relating to the city of Cincinnati, in force January 1, 1869, may be found in Disney's collection of laws and ordinances and the supplement thereto. This includes the laws relating to the Cincinnati Hospital, schools and escheated lands in Cincinnati, the Covington and Cincinnati Bridge, and many others of like importance. Still others merely local or temporary, as the act relating to schools in Cleveland and some other cities, or the numerous acts conferring power to borrow money for sewerage, avenue, water-works and other purposes, must be sought in the annual volume of the laws.

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